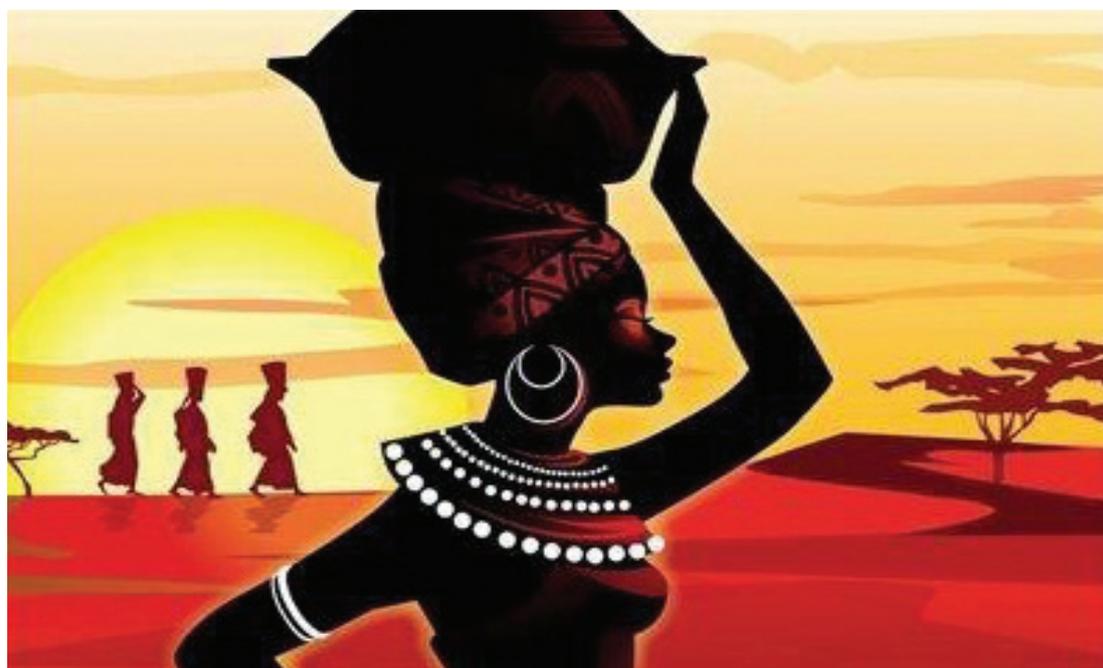


GENDER RIGHTS UNDER CULTURE RITES:



Assessing women's
empowerment through
Houses of Traditional
Leaders in South Africa

2018



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FOREWORD & ACKNOWLEDGEMENTS

This report is the second and final in a two-year project aimed at exploring the role of houses of traditional leaders in promoting gender mainstreaming within the traditional sector through women's empowerment, representation and participation in decision making processes inside the houses of traditional leaders in South Africa. The study sought to assess progress made in advancing the right of women to gender equality, and the obstacles encountered by the houses of traditional leaders in the course of promoting gender equality and women's empowerment.

This first report covered four provincial houses of traditional leaders (i.e. Eastern Cape, KwaZulu-Natal, Mpumalanga and North West). For this current financial year (2018/19), the project focussed attention on the following houses of traditional leaders: The National House, Limpopo, Northern Cape and the Free State.

It needs to be borne in mind that the National House of Traditional Leaders, together with all the provincial houses of traditional leaders, are constitutionally entrenched institutions of governance in South Africa, funded through public taxes. Because of this, they are legally and constitutionally obligated to not only observe and uphold the laws of the country, but also to take concrete steps to ensure that the rights and freedoms of citizens in their areas of jurisdiction are realised. This study, therefore, sought to assess the extent to which these houses played a role and took the necessary concrete steps to promote the right to gender equality through gender mainstreaming, including advancement of women's empowerment through greater participation and representation in decision making processes. The study also sought to explore the role of these institutions specifically on issues relating to the health, welfare and sexual reproductive rights of women in areas and communities under their jurisdiction.

As was discovered during the first year of this study, there was widespread lack of interest and, in some cases indifference, within the sector with regards to ensuring that concrete steps were taken, and programmes put in place to promote gender equality through specific gender mainstreaming programmes on the ground. In many instances, lack of knowledge and understanding characterised the sector on the issue of gender equality and transformation. The CGE therefore released this report to the public with hope that it will trigger the necessary public debates about the role of the houses of traditional leaders in dealing with issues of public policy importance such as gender equality and transformation within the traditional sector as provided for in relevant sections of the Traditional Leadership and Governance Framework Act, No. 41 of 2003.

Based on the findings of this study, the CGE is convinced that much more could have been achieved by the houses of traditional leaders in terms of concrete programmes of action to promote the right to gender equality and gender transformation through greater women's empowerment, participation and representation in decision making processes.

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The CGE wishes to convey its gratitude to leadership and administrative staff of the National House of Traditional Leaders as well as the leadership and administrative staff of the Provincial Houses of Traditional Leaders of Limpopo, Northern Cape and the Free State for the cooperation and assistance received during the fieldwork phase of this study. We are also grateful to our provincial offices where assistance was sought and provided during the time of this project. Finally, the CGE congratulates the research team members that carried out this study and compiled this report. They are Naledi Selebano, Thubelihle Zitha, Lieketseng Mohlakoana-Motopi, and Lindelwe Motha. The CGE is also grateful to Luvisa Bibi Bazola, who was part of the project during the fieldwork phase before relocating overseas. The report was finalised and edited by Thabo Rapoo, Director for the Commission's Research Department.

ABBREVIATIONS & ACRONYMS

CGE:	Commission for Gender Equality
CODESA:	Convention for a Democratic South Africa
CoGHSTA:	Cooperative Governance, Human Settlement and Traditional Affairs
CoGTA:	Cooperation Government and Traditional Affairs
DAC:	Department of Arts and Culture
DOH:	Department of Health
DOJ & CD:	Department of Justice and Constitutional Development
DOJ:	Department of Justice
DRDLR:	Department of Rural Development and Land Reform
DSD:	Department of Social Development
GBV:	Gender-Based Violence
IDP:	Integrated Development Plan
KZNHTL:	KwaZulu-Natal House of Traditional Leaders
LHTL:	Local House of Traditional Leaders
NCHTL:	Northern Cape House of Traditional Leaders
NDP:	National Development Plan
NHTL:	National House of Traditional Leaders
NPA:	National Prosecuting Authority
NPS:	National Programme of Support
NSP:	National Strategic Plan
PHTL:	Provincial House of Traditional Leaders
SAJEI:	South African Judicial Education Institution
STI:	Sexually Transmitted Diseases
TB:	Tuberculosis

1. INTRODUCTION

As pointed out in the introduction to the first report¹ of this study, the institution of traditional leadership, the systems and practices attached to it represent the earliest form of organising human affairs based on commonly accepted customs, cultural and traditional ways of doing things. In the modern era where societies are governed or ruled on the basis of new universally accepted values, practices and forms of organising and running human affairs, the contradictions that arise from the convergence of these different systems of organising human affairs are subjects of continuing public and scholarly debates.

South Africa's Constitution, which gave birth to its current system of government that is based on the principle of democracy and deriving its legitimate authority from the fundamental right of its citizens to choose those they prefer to rule over them, also embraces the system of traditional leadership that is based on the right of the rulers to exercise authority over their subjects on the basis of the rulers' birthright. This presents an important and fundamental contradiction that lies at the heart of the subject matter of this study. This study sought to assess the role of the Houses of Traditional Leaders in South Africa as constitutionally entrenched institutions, in promoting and advancing one of the fundamental rights entrenched in the Bill of Rights, in Chapter 2 of the country's Constitution: the right to gender equality.

The Constitution gives the citizens of the country a set of basic human rights, one of which is the right to gender equality, and all institutions of the state, including the Houses of Traditional Leaders, are therefore legally and constitutionally obligated not only to observe but also to take active steps to realise these rights. Failure not only to ensure that South African citizens enjoy their human rights is therefore a failure to abide by a key provision of the country's Constitution. The study also sought to explore the role of the house of traditional leaders specifically in terms of the steps taken to put programmes in place and carry out activities relating to the promoting of the health, welfare and sexual reproductive rights of women in areas and communities under their jurisdiction. Under this thematic area, the study focussed attention on practices such as 'ukuthwala', under-age marriages, under-age virginity testing and others prohibited by law in South Africa.

The findings contained in this study, which largely mirror those contained in the first report of this study published in 2017, reflect the fact that the traditional sector in South Africa has not fully embraced the right to gender equality as contemplated in the Bill of Rights in Chapter 2 of the Constitution. The failure of the sector not only to embrace the right to gender equality, but also to take the necessary steps to empower women as well as other genders (e.g. the members of the Lesbian, gay, bisexual, trans-sexual, inter-sex, queer and others) in line with this right to gender equality, remains one of the key sources of social conflict in democratic South Africa.

¹ CGE (2017), *Royalty and Women's Empowerment: Assessing gender mainstreaming through houses of traditional leaders*, (Commission for Gender Equality, Research Report)

The traditional leadership sector lags in terms of promoting and mainstreaming gender equality within its areas of jurisdiction as recognised in the country's Constitution. In some ways, the sector appears unaffected if not indifferent to some of the key provisions contained in the country's Constitution as well as various pieces of legislation regarding gender equality. As a result of this seeming indifference, wide disparities continue to characterise the situation of women compared to men in terms of access to socio-economic resources including opportunities to make a living and improve their quality of life. Positions of authority continue to be dominated by men, who play leading roles in key decision-making processes within the sector in general, as well as within institutions of traditional leadership where important decisions are made that affect the lives of women.

This study was carried out by the Commission for Gender Equality (CGE) in order to gain insights not only into why the traditional sector lags in terms of complying with the country's existing policies and laws regarding gender equality, but also to understand the obstacles and ways of overcoming them. The findings contained in this report, therefore, shed some light into some of the reasons and obstacles within the traditional sector regarding the slow progress towards achieving gender equality and women's empowerment.

1.1. METHODOLOGY AND RESEARCH APPROACH

As indicated in the previous section, this study was intended to assess the extent to which gender mainstreaming as a government policy and strategy is being implemented through the houses of traditional leaders, and the extent to which the right to gender equality is being observed and advanced to empower women and other genders as recognised in the country's Constitution and system of laws. It also sought to explore the role of the house of traditional leaders in terms of the steps taken in terms of promoting the health, welfare and sexual reproductive rights of women. Here the focus was on practices such as 'ukuthwala', under-age marriages, under-age virginity testing and others which are prohibited by law in South Africa.

A qualitative research approach was utilised in this study. This approach was deemed appropriate for it allows for a closer and detailed examination and analysis of personal experiences, ideas and knowledge of those with lived experiences of the system of traditional leadership as promoted and practised through the houses of traditional leaders. As part of this approach, the study relied on various methods of gathering data, such as in-depth, one-to-one interviews with traditional leaders, in-depth reviews of the formal specific programmes of the various houses of traditional leaders, their internal structures, rules governing the operations of these houses, the formal institutional practices and programme activities with relevance to the constitutional imperative of advancing gender equality and transformation in South Africa.

This study proceeds from the premise that the Houses of Traditional Leaders in South Africa, like other constitutional bodies funded through public taxes, are legally and

constitutionally obligated to abide by and take concrete steps to observe, uphold and promote the rights of citizens as contained in the Constitution and other laws of the country. One of these rights is the right to gender equality. The study, therefore, sought to assess and evaluate the concrete steps taken by the houses of traditional leaders, and progress achieved, towards gender mainstreaming and gender transformation within their areas of jurisdiction.

The study was primarily a fieldwork-based exercise aimed at collecting data through in-depth interviews as well as onsite observations of the activities of these institutions during the 2018/19 financial year. During this financial year, the study covered three (3) Provincial Houses of Traditional Leaders as well as the National House of Traditional Leaders. In addition to the in-depth interviews and site visits/observations, official reports and documents (including programme documents, internal operational documents, rule books and other official documents) were obtained and subject to content analysis to determine the place of gender mainstreaming as a formal policy imperative and programme objective for the houses of traditional leaders.

As a matter of routine practice for the project team, prior to the commencement of the study, the research team conducted in-depth briefing sessions with the leadership structures of the various houses of traditional leaders to ensure clarity and understanding of the subject matters of the study, including its aims and objectives. At the same time, these briefing sessions also provided invaluable opportunities for the team to familiarise itself with the unique institutional characteristics and other practical factors pertaining to each house as this often proved valuable during the fieldwork/primary data collection phase of the study.

Individual semi-structured interviews were conducted with Office Bearers from the house of traditional leaders covered in this report, including chairpersons and members of the internal committees and ordinary members of these houses. For in-depth interviews, greater emphasis was placed on members who had served for longer periods of time (i.e. more than two years) to benefit from their experiences and institutional memory. In addition to the traditional leaders interviewed for this study, officials from the respective national and provincial government departments providing administrative and technical support to the houses of traditional leaders were also selected for interviews. The Table below provides details of the respondents interviewed for each of the 4 Houses covered in this report.

Table 1: Details of Informants from the selected Houses of Traditional Leaders

Houses of Traditional Leaders	No. of Traditional Leaders Interviewed	No. of Officials Interviewed
• National House of Traditional Leaders	8	4
• Limpopo Provincial House of Traditional Leaders	6	2
• Northern Cape Provincial House of Traditional Leaders	5	2
• Free State Provincial House of Traditional Leaders	7	2

An interview guide was drafted to guide the interviews. It contains a set of key questions used to trigger responses and discussions with informants on various issues and topics for the study. In identifying and selecting informants to be interviewed, the research team ensured that there was a balance of male and female traditional leaders, even though this was not always practical due to various factors (i.e. time constraints, availability of informants, etc.).

Finally, the informants who were interviewed for this study were advised that their participation was strictly voluntary and that their identities and confidentiality would be guaranteed where necessary. This was especially important in the case of administrative officials from the supporting government departments who felt uncomfortable openly expressing critical views regarding the operations and effectiveness of these institutions.

1.2. CONSTRAINTS TO THE STUDY

Studies of this nature, especially based on primary fieldwork activities that depend largely on the cooperation and collaboration of other role players, are always subject to constraints and limitations that often delay the completion of planned activities or cause the team to make alternative arrangement to carry out some of the planned activities.

Firstly, the issue of the availability of the informants at the times agreed was always a factor that affected the smooth proceedings of planned fieldwork activities, often leading to longer time spans than was anticipated. For instance, in the case of the Northern Cape province, at the time of the fieldwork, parts of the provinces were experiencing service delivery protests that caused some of the field work to be delayed or rescheduled to different time periods. In some provinces, the team had to travel long distances in order to interview traditional leaders at their homes in their home villages.

Secondly, administrative officials from the supporting departments were often reluctant to be interviewed for this study, often for fear of senior officials in cases where unfavourable information was disclosed.

Thirdly, many of the informants either took too long or were reluctant to provide supporting documentation as requested by the CGE Research Team as part of data gathered for the study.

Fourthly, the lack of knowledge and understanding of gender equality and related concepts among many of the informants was a key constraint as it significantly limited the ability of many informants to express substantive views on the activities and programmes of these houses with a bearing on gender mainstreaming issues.

Finally, the issue of language used for interviews became a key limitation in some areas, especially in Limpopo and the Free State. In some instances, it was not practical to

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conduct the interview with the informants in English. This was especially the case with the traditional leaders, many of whom either could not speak English fluently, or insisted on the use of local languages in which they were comfortable, articulate and fluent. This was a limitation for the team in cases where none of the research team members could speak the languages concerned. In such cases, efforts were made either to secure the assistance of officials or other members who could help with interpretations and/or translations.

2. OVERVIEW AND CONTEXT OF GENDER INEQUALITY IN THE TRADITIONAL SECTOR

2.1. BRIEF PERSPECTIVES ON HISTORICAL DEVELOPMENTS AND EVOLUTION OF THE SYSTEM OF TRADITIONAL LEADERSHIP

The history of traditional leadership in South Africa is a subject of varying scholarly perspectives, focussing on the evolution of the structure from the pre-colonial period through the post-colonial and apartheid periods into the post-apartheid democratic era. The dawn of the post-apartheid democratic era occurred in the context of greater global attention on human rights and women's rights. Some scholars argue that the traditional leadership structures in South Africa have historically played a critical role in ensuring that their subjects enjoyed the benefits of the system including guaranteeing social order and securing access to basic needs for their communities on the ground. While acknowledging that women never enjoyed full and equal privileges with men under traditional systems of authority, they also argue that women in pre-colonial Africa governed kingdoms, established cities, launched military conquests, and founded states.²

Koenane argues that the arrival of imperialism in South Africa in 1795 forcefully changed the way of life for the natives. During this period the respect for the dignity of individuals and their right of access to resources and services was largely determined along racial lines. Gender designation also played a major role within different racial groups, with women turned into legal minors to men and therefore relegated to the status of secondary citizenship with minimal human rights and access to resources. An alternative view to the above is that the reorganisation and institutionalisation of the system of traditional leadership during the apartheid era signalled a period where the traditional sector was used as an instrument of "divide and rule"³ which diverted the system from its original values to serve the needs of the apartheid era political agenda. The argument is that during the apartheid era, the system of traditional leadership abandoned its historical and traditional communitarian values that underpinned its origin and existence and became an instrument that served the needs of the apartheid political agenda with its values focussing largely on individual privileges for the leaders who collaborated with the apartheid regime.

The above argument contents that the apartheid era was a period when black women were subjected to greater forms of oppression, particularly gender and racial forms of oppression, than their male counterparts. For instance, the enactment of the Black Administration Act of 1927 had subjugated and marginalised black women by turning them into legal minors irrespective of their age or marital status. This denied them rights to property ownership, access to the justice system on their own right or even the ability to enter into any form of contract without the consent of the male guardian. Their legal status as minors further denied them the right to negotiate or

² Tripp, A.M. (2017) Women and Politics in Africa

³ Koenane, M.L.J (2009) Traditional Leadership and its Relation to the Democratically Elected Local Government Structure in KwaZulu-Natal. University of Free State

terminate the marriages, including the right to be granted custody over their children upon dissolution of marriage. It is also important to indicate that even though women were regarded as legal minors, they were the de facto heads of households in the rural areas due to the system of migrant labour that caused men to migrate to urban areas seeking employment and other economic opportunities. Women, on the other hand, were prohibited by the Native (Black) Urban Areas Act 21 of 1923 from migrating to urban areas seeking the same economic opportunities except only as domestic workers.

2.2. ROLE AND FUNCTIONS OF TRADITIONAL LEADERS IN A DEMOCRATIC SOUTH AFRICA

The role of the traditional leaders in South Africa has been debated by different scholars since the advent of colonialism and the introduction of the apartheid system in the country. According to Spiegel and Boonzaier, there is evidence to argue that during the pre-colonial period a significant proportion of the Southern African population was organised into political groupings with authority vested in hereditary leaders known as 'chiefs'.⁴ However, according to this view, the monopoly of power by traditional leaders came to an end when colonial rulers introduced new administrative systems of authority⁵ whereby traditional leaders became the agents of colonial governments. In other words, the systems of traditional authority were co-opted by the colonial government to suit the needs of the colonial systems of power, thus serving to promote its objectives and aims.⁶

Similarly, the apartheid system of government co-opted much of the system of traditional leadership in South Africa. However, the decline of the apartheid system in the late 1980s and the start of a negotiated political settlement at the Convention for a Democratic South Africa (CODESA) in the early 1990s saw the role and position of traditional leaders in South Africa becoming part of these negotiations. The CODESA negotiations eventually recognised and entrenched the position and role of the system of traditional leadership in the country's polity within the new Constitution, through Chapter 12.⁷ This institution of traditional leadership is clearly important and continues to play a critical role in the lives of communities in representing its embodiment of the customs, traditions and values of communities under their authority. In addition to this, the new democratic dispensation also identifies a role for these institutions in terms of the socio-economic development of the communities and areas under their jurisdictions, including the role of nation building, the promotion of gender equality, and accountability.

⁴ Spiegel, A & Boonzaier, E (1998), "Promoting Tradition: Images of South African Past" in Spiegel A & Boonzaier E (eds), in *South African*.

⁵ Khunou, F.S (2009), *Traditional Leadership and Independent Bantustans of South Africa: Some Milestones of Transformative Constitutionalism Beyond Apartheid*

⁶ Ibid

⁷ See RSA, Constitution of the Republic of South Africa Act 108 of 1996. Also see Koenane, M.L.J (2009) *Traditional Leadership and its Relation to the Democratically Elected Local Government Structure in KwaZulu-Natal*. University of Free State

While the system of traditional leadership as entrenched within the country's polity is also subject to the constitutional and legislative requirements to uphold, promote and advance the human rights contained in the Constitution, some of the provisions of legislation governing the system of traditional leadership contain provisions that are potentially problematic. One example of this is that under various pieces of provincial legislation relating to the appointment of traditional leaders to the provincial houses of traditional leaders, the majority (60%) of the members of the royal council are appointed by the royal families, while only (40%) is appointed by the community. This gives the royal houses (which are still reluctant to appoint more women to positions of leadership due to long-standing cultural and traditional practices that place male primogeniture at the centre of traditional authority, leadership and inheritance) in the different provinces a wide scope of powers to continue appointing more males to positions of leadership. This is reflected in the current male-dominated memberships of all the houses of traditional leaders in South Africa.

Currently, the houses of traditional leaders in South Africa enjoy a set of powers, duties and functions deriving from various pieces of national and provincial legislation, especially the various provincial legislations on the houses of traditional leaders, as well as the Traditional Leadership and Governance Framework Act no 22 of 2009. Among others, provincial houses of traditional leaders are legally empowered to advise the provincial legislatures on matters dealing with traditional authorities, indigenous law and the customs and traditions of communities.⁸ The traditional leaders are also responsible for the allocation of land, in trust areas; preservation of law and order; provision of administrative services at local government level; administration of social welfare, such as processing of applications for social security benefits; promotion of education, such as erection of education facilities and putting in place sustainable measures and maintenance of such facilities as well as administering access to education finance.

2.3. SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

As part of this study's objective of assessing the role of houses of traditional leaders in promoting gender equality through strategies such as gender mainstreaming and women's empowerment programmes in their areas of jurisdiction, the study also sought to assess the role of these institutions in ensuring that the needs of women and girls relating to health, welfare and reproductive rights are observed, upheld and protected through their programmes of action. Sexual and reproductive health rights are an important precondition for the empowerment of women and girls, accompanied by concrete steps to end gender-based violence, harmful practices including child marriages, ukuthwala as well as genital mutilation.

This study discovered that most of the houses of traditional leaders, both provincial and the national house, had established internal committees responsible for matters related to gender, healthcare and welfare. It would therefore be expected that such internal committees would place a great deal of emphasis on overseeing the observance and provision of social welfare, sexual and reproductive rights-related services for women

⁸ S 183, Principle XII, Constitution of the Republic of South Africa, 1996, (hereafter the 1996 Constitution)

and girls (as well as men and boys) in their areas of jurisdiction, including the local communities from which the various traditional leaders were selected to be members of the provincial houses of traditional leaders.

Moreover, relevant provisions of the South African Constitution and other related laws, including several international instruments that the country has signed up to, afford citizens a set of basic human rights, including the right to be treated with dignity and humanity. Women and girls are therefore entitled to basic amenities that promote their welfare, sexual and reproductive health. Women and girls are also entitled to a set of basic rights, including the right to protection and privacy, including amenities and services appropriate for pregnant women or mothers with small children.

Ordinarily, government departments such as the national and provincial departments of health are responsible for formulating appropriate policies, legislation and programmes to cater for the needs and rights of women to access proper health, welfare and reproductive services through healthcare centres and healthcare service providers. However, in many local rural communities across areas of jurisdiction of these houses of traditional leaders, especially in communities where limited provision of such healthcare and welfare services is exacerbated by lack of information and limited knowledge among women and girls, the ability of women and girls to claim their right to access these services could be enhanced depending on the role that traditional leaders play in this regard. The role of traditional leaders in this regard could be critical, especially in instances where certain practices such as under-age marriage, under-age virginity testing, ukuthwala, female genital mutilation (and even circumcision for young men) pose risks to the health, welfare and reproductive rights of women, girls and boys.

3. RESEARCH FINDINGS

3.1. NATIONAL HOUSE OF TRADITIONAL LEADERS

3.1.1. *Introduction and brief background on the house*

The new political dispensation in 1994 came with the recognition of new South African institutions; one such institution is the institution of traditional leadership. Chapter 12, (s. 211) and (s. 212) of the South African Constitution recognises the status and role of traditional leadership and further states that “national or provincial legislation may provide for the establishment of houses of traditional leaders”.⁹ Hence, the Provincial Houses of Traditional Leaders that currently exist in seven (7) of our nine (9) provinces as well as the National House of Traditional Leaders (NHTL) in the Gauteng province.

The National House of Traditional Leaders (NHTL) was established in Cape Town on the 18th of April in 1997¹⁰ in accordance with the Constitution of South Africa to represent, promote and protect customs and traditions of South African communities. Furthermore, as a statutory body authorised to enact legislation relevant to Traditional Leadership, the NHTL is expected to report to parliament.¹¹ The House was initially called the Council of Traditional Leaders and was meant to be based in Cape Town.¹² However, for reasons undisclosed, the seating of the House currently takes place in Pretoria at the premises of the Department of Traditional Affairs within the Ministry of Cooperative Governance and Traditional Affairs (CoGTA). CoGTA is responsible for providing administrative, technical and financial support to the NHTL. To help execute this supportive role, staff members including a Chief Executive Officer (CEO) were appointed.

As legislated, three members from each Provincial House of Traditional Leaders (PHTL) ascend to the NHTL for a five-year term, during which they represent their Provincial Houses of Traditional Leaders. Initially, the NHTL consisted of only 18 members. This was because the Gauteng and Northern Cape provinces were not represented in the membership of the National House because the two did not have their own fully-fledged provincial houses of traditional leaders. This has since changed, however. The NHTL now has a membership of 23 after three members from the Northern Cape and two from Gauteng were subsequently added. The Western Cape Province is excluded as it currently has no formally recognised traditional leaders. Among the many responsibilities noted in section 13 of the National House of Traditional Leaders Act (No. 22 of 2009),¹³ the NHTL also has responsibilities specific to provincial houses, which are:

⁹ Constitution of the Republic of South Africa (1996).

¹⁰ Interview held with an official from CoGTA, Pretoria, September 2018.

¹¹ Interviews revealed that the National House currently does not report to parliament due to disgruntlements over the status of the House.

¹² Ibid.

¹³ National House of Traditional Leaders Act 22 of 2009.

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- In addition to quarterly meetings, to hold an annual meeting with provincial houses to give an account of the activities and finances of the House
- To establish clear relationships with, and facilitate co-operation and communication between itself and provincial houses as well as between provincial houses;
- To promote an equitable, fair, open, non-discriminatory and supportive environment for all provincial houses

Similarly, section 15 of the National House of Traditional Leaders Act (No. 22 of 2009), speaks to the relationship that ought to exist between the House and provincial houses. In this regard, the House must investigate matters referred to it and make recommendations, must give administrative advice, must hold meetings biannually on matters concerning the welfare of traditional communities, where necessary must interact with local and traditional councils in consultation with relevant provincial houses, must establish a body of Chairpersons as well as a body of Secretaries of provincial houses to interact with the House regularly on issues of mutual interest.¹⁴

When the NHTL was established, the Chairperson, Deputy Chairperson as well as all other members were part-time until 1998, when the then National House of Traditional Leaders Act (No. 10 of 1997) was amended to provide for the full-time status of the two positions of Chairperson and Deputy.¹⁵ It is important to note that this Act was later repealed. However, the National House of Traditional Leaders Act (No. 22 of 2009) still governs the membership status of members of the house. Section 10(1) reiterates that "the Chairperson and Deputy Chairperson shall be full-time members of the House".¹⁶ Additionally, subsection (2) states that "the president may, after consultation with the House, determine that, subject to subsection (1); certain members are full-time members of the House".¹⁷

Although the names of committees have changed over the years, the NHTL still has committees put in place to help it fulfil its mandate, these committees are:

- Executive Committee
- Planning and Co-operative Governance Committee
- Committee of Chairpersons
- Social Development Committee
- Land, Rural Development and Tourism Committee
- Justice, Crime Prevention and Security Committee
- Tradition, Heritage and Culture Committee
- Gender and Community Development Committee

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

When members are nominated and elected to represent their PHTL at the NHTL, a leader of the delegation is also elected within those three members.¹⁸ These leaders of delegations then form part of the Executive Committee.¹⁹ One of the responsibilities bestowed upon the Executive Committee is to determine the number of members on committees.²⁰ The Rules and Orders of the NHTL further state that the “National House should as far as possible, ensure that women are represented in all these committees”.²¹ Also, each committee is assigned a co-ordinator (an administrative support staff seconded from the government) to handle the administration of the relevant committee.²² Lastly, the National House must meet at least once every quarter.²³

Although transformation has proven to be a slow process within traditional leadership as a sector; previous records indicate that gender representation has somewhat improved in the NHTL. At the start of its operation in 1997, the House consisted of 17 male members and only one female member. As provided for by both the National House of Traditional Leaders Act (No. 22 of 2009) and the Traditional Leadership and Governance Framework Amendment Act (No. 23 of 2009), gender representation must be promoted within the institution of traditional leadership. Hence, it is important to acknowledge that, of the 23 members currently in the NHTL, 8 are female and 15 are male.

3.1.2. Internal policies and processes for gender mainstreaming

The NHTL has developed a set of internal ‘Rules and Orders’ that, among others, state that “the National House should, as far as possible, ensure that women are represented on all committees”.²⁴ Based on the National House of Traditional Leaders Act of the NHTL, the institution has a role to ensure that gender transformation becomes an integral part of its business as well as that of the provincial houses of traditional leaders. The National House of Traditional Leaders Act No. 22 of 2009 empowers the National House to ensure that provincial houses respect and operate within the framework of the Bill of Rights by preventing unfair discrimination, promoting equality, and ensuring gender representation in the succession of traditional leadership positions is progressively advanced. However, it would appear that the NHTL did not put in place clear and effective systems to hold the provincial houses accountable for implementing gender mainstreaming policies and practices. In fact, it seems that the NHTL does not have clear strategies in relation to transforming the entire traditional leadership sector, especially focussing on local houses, traditional councils and processes of appointing traditional leaders by royal families. This is despite the widespread practices in the name of culture and tradition that tend to discriminate against potential female heirs who often resort to courts and legal battles to claim their right to assume positions of leadership in their communities.

¹⁸ Interview with one of the senior Traditional Leaders from the NHTL.

¹⁹ Ibid.

²⁰ Rules and Orders of the NHTL, December 2013.

²¹ Rules and Orders of the NHTL, December 2013.

²² Interview held with an official from CoGTA, Pretoria, September 2018.

²³ National House of Traditional Leaders Act No. 22 of 2009.

²⁴ Chapter 7, S 90 (3) Rules and Orders of the National House of Traditional Leaders.

Internally, the NHTL had slightly exceeded the 1/3 quota of women's representation that is prescribed by the National House Act. According to the Act, "At least a third of the members of the House must consist of women: Provided that if the Minister is satisfied that there is an insufficient number of women to participate in the House the Minister must, after consultation with the Premier in question and the provincial house concerned, determine a lower threshold".²⁵ Women's representation stood at 35% as there were eight (8) women out of the twenty-three (23) positions/seats of the House. This is, however, the bare minimum considering that two (2) provincial houses (KwaZulu-Natal and Northern Cape) had not sent any women as part of their delegations. An informant revealed that the female candidate from the KwaZulu-Natal had declined the nomination, although reasons for her declining were not disclosed. The House then appointed three (3) male representatives as delegates to the National House.²⁶ For the CGE, this explanation does not hold water given that the KwaZulu-Natal Provincial House (KZNHTL) had a total representation of six (6) female senior traditional leaders in the 2017-2022 term of the House. Had the NHTL and the KZNHTL been serious about enforcing gender quotas, then efforts would have been made to lobby for at least one (1) out of the six (6) women to be represented at the National House. In the case of the Northern Cape, the only female senior traditional leader in the province had been serving in the position of the Chairperson of the House, which made it difficult for her to hold two senior positions in the structures of the House. The Northern Cape Provincial House (NCHTL) however, had two (2) Headwomen whom according to the National House Act²⁷ can serve as representatives of provincial houses that do not have enough numbers of female senior traditional leaders. The NHTL had, however, allowed for this to fall through the cracks by accepting an all-male delegation from the Northern Cape.

In terms of representation in committees, the House had managed to strike a gender balance in the appointment of chairpersons of committees. Four (4) committees, i.e. Committee of Chairpersons, Social Development Committee, Justice, Crime Prevention and Security Committee and Gender Committee, were chaired by women, while the Executive Committee, Planning and Cooperative Governance Committee, Land, Rural Development and Tourism Committee and the Tradition, Heritage and Culture Committee were chaired by men. Informants revealed that the decision to have an equal representation of men and women in the positions of committee chairpersons was part of the resolution that was taken by the House, apparently based on the motivations of the Chairperson and Deputy Chairperson to improve women's representation in positions of leadership in the national House.²⁸ This has, however, not been properly legislated into the guiding frameworks of the House, leaving potential for future regression. A sustainable mechanism for gender mainstreaming requires clear legislative and policy commitments.

²⁵ S 3 (4) National House of Traditional Leaders Act No. 22 of 2009.

²⁶ Interview held with a Member of the National House of Traditional Leaders, Pretoria, September 2018.

²⁷ S 3 (1) (a) National House of Traditional Leaders Act No. 22 of 2009.

²⁸ Interviews held with a Member of the National House of Traditional Leaders, Pretoria, September 2018.

Given that the 'Rules and Orders' of the NHTL call for women's representation on all its committees, it appears that this provision was adhered to, apart from the Planning and Cooperative Governance Committee that contains only men in its membership. The interviews revealed that members were responsible for choosing committees that they wanted to form part of and that expertise and interest were the criteria used when constituting committees.²⁹ The application of the criterion of expertise for membership of committees, however, appears inconsistent as it did not seem to apply to all the committees. For example, some of the members of the Gender Committee that were interviewed for this study were not knowledgeable about gender issues and gender mainstreaming policies.

While internal decision-making structures of the NHTL obviously have more male traditional leaders compared to female, mainly due to the lower representation of women in its general membership, the Executive Committee, which is the most senior structure of the House, had a representation of two (2) women and four (4) men, which exceeded the one-third quota required for the general membership of the house. However, in terms of promoting gender equality in general, the performance of the House is poor. The Chairperson and Deputy Chairperson were male and female respectively. The interviews revealed that the House took another resolution to appoint a woman into the position of the deputy chairperson, although it would appear that this appointment had more to do with the capabilities of the candidate, rather than her gender.³⁰ This was the second time that a woman had been appointed to this position since the inception of the House; although the first female Deputy Chairperson did not finish her term.³¹ However, no woman had ever served as chairperson of the NHTL, and there appears to be no system or policy to ensure that women have equal chances of being appointed to any position of leadership in the NHTL, including the position of Chairperson. The fact that the NHTL could take resolutions to appoint women in certain positions was not a guarantee that this would be the case for the position of Chairperson.

The NHTL has an internal committee on Gender and Development. In theory, this committee is potentially an important internal mechanism for the NHTL to develop the necessary clear internal policies, programmes and strategies to prioritise and promote gender equality and women's empowerment. Available information showed that the Committee's functions, as outlined in the Rules and Orders of the House,³² are the following:

- a) Handle all matters relating to care and welfare of women, the older persons, youth and children,
- b) Handle all matters relating to women with disabilities
- c) Arrange capacity building relevant to the committee
- d) Organise joint meetings and operations with relevant institutions
- e) Ensure that the House through its Committees pays attention to women and gender issues when it conducts its activities; and

²⁹ Ibid

³⁰ Ibid.

³¹ Ibid.

³² Chapter 7, S 118 Rules and Orders of the National House of Traditional Leaders.

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- f) Ensure that the concerns of women are adequately taken into account in the public participation of programmes of the House.
- g) Ensure that women in rural communities participate in government programmes (economic, agricultural and social activities).

It is important to note that among the functions and responsibilities listed for this committee, none of them appear to give the committee the power and authority to oversee and hold accountable the provincial houses for their programmes of action in the same policy sector (i.e. gender and development). It is also not clear what powers this committee, or indeed all the others, have to oversee the work of national government departments or other executive agencies, and hold them accountable on sectoral policy matters related to the subject areas of these committees. It would also appear that these functions and responsibilities as listed above are largely broad, vaguely defined and unspecific (e.g. 'handle', 'ensure') or co-ordinatory (e.g. 'organise', 'arrange',). This suggests a hands-off role, probably focussed on getting other institutions to initiate activities, or coordinating the activities of other institutions. In fact, based on the information and insights obtained through interviews with key informants on the work of the Committee, the Committee has been largely inactive and therefore has not achieved much by way of discharging its functions and responsibilities in the policy sector under its jurisdiction. Instead, issues of gender were dealt with in an ad hoc manner, while improving women's representation appeared to be subject to occasional random resolutions of the House, with initiatives led by the Chairperson and the Deputy Chairperson. Budget inadequacies were cited as the main hindrance to the functioning of the Committee and this had apparently been the case for a long time.³³ Surprisingly, the committee was still able to hold meetings to plan and report despite the lack of budget allocations and clear programmes of action. The lack of active programmes of action by this Committee appears to mirror the situation observed among provincial committees of the same subject matter. In fact, there appeared to be no relationship between this Committee and its provincial counterparts of the same name and subject matter. The Rules and Orders of the House mandate it to "establish clear relationships with and facilitate co-operation and communication between itself and provincial houses as well as between provincial houses", and the Committees are the key mechanisms through which this mandated cooperation and collaboration can occur around common programmes of action.

In the case of the Ministry of CoGTA, the National House of Traditional Leaders Act No. 22 of 2009 prescribes that the Department must offer support to the NHTL in the form of infrastructure, finances, human resources, skills development programmes and administrative systems.³⁴ In practice, the support role has developed into what some members felt was complete control of the NHTL by the Department. Furthermore, the Department had not ensured that the members of the NHTL were provided with the necessary skills and relevant knowledge, particularly on the constitutional imperative of promoting gender equality and gender mainstreaming in line with the country's

³³ Interviews held with officials from CoGTA & Members of the National House of Traditional Leaders, Pretoria, September 2018.

³⁴ National House of Traditional Leaders Act 22 of 2009.

Constitution and relevant legislation. It was revealed through interviews that the Department had only conducted a 'mini-research' study on the gender representation of traditional leadership structures in the various provinces³⁵ even though the focus of the study was the gender disparities in the various traditional leadership structures without exploring the root causes of such disparities.

While issues of gender equality appeared to be the least prioritised by CoGTA, some informants interviewed for this study made allegations of sexual harassment being prevalent against staff, allegedly by senior staff in the Departmental Unit of the House. One of the informants interviewed for this study shared that she had experienced sexual harassment and added that many survivors of sexual harassment by other staff members (especially senior staff members) had felt disempowered to report their experiences of sexual harassment.³⁶

It would appear that these allegations of sexual harassment occur in the context of lack of written policy on sexual harassment by the Department or even the NHTL. If such a policy existed, the officials interviewed for this study had no knowledge thereof. Officials interviewed for the study referred to the prevalence of an internal patriarchal organisational culture that ensures that such incidents of sexual harassment were ignored, suggesting that even if such a policy on sexual harassment was in place, the effectiveness of its implementation would have been undermined by what the informants felt was a patriarchal environment that condoned such behaviour.³⁷

Three positions were presented regarding the treatment of female members of the House by their male counterparts and women's general participation during the proceedings of the House. The first was that there was equal treatment of women and men in the House. The second was that some women were constrained by cultural beliefs, such as the notion that 'the man is the head' and therefore must speak first. It was not clear if the House had strategies in place to dismantle this barrier. It did, however, appear that this practice was being accepted and tolerated. The third and last position was that women were undermined and often unheard. This is what one of the informants had to say in line with this position:

*"The women have a right to talk. But after she speaks the meeting will carry on as if nothing was said... In some instances, it is surprising that a woman will raise an issue and be ignored, then a man will stand up and raise the same issue and it will seem like a new revelation. Within the staff, as a woman you cannot question [name of alleged perpetrator withheld]."*³⁸

Some of the female members interviewed stated that in order for them to be taken seriously, they had to become more assertive in their interactions with the House. The approach appeared to be effective as these women's names were consistently being revealed during the interviews as some of the few women whose views were

³⁵ CoGTA, Gender and Community Development Committee: Draft Concept Paper on Gender Equality in Traditional Structures, unpublished.

³⁶ Interview with a departmental official, 12th September 2018.

³⁷ Ibid.

³⁸ Ibid.

adequately captured and addressed by the House.³⁹ This suggests that women had an added burden of proving their worth, while men were automatically being accorded the respect that comes with being a member of the House.

3.1.3. Programmes, projects and services for gender mainstreaming

The Constitution mandates the establishment of Houses of Traditional Leaders by means of either provincial or national legislation. As previously indicated, the NHTL is a statutory body that is established in terms of the law and has various committees to help it achieve its mandate through the implementation of plans, programmes and projects.

As already indicated, the Department of Traditional Affairs within the Ministry of Cooperative Governance and Traditional Affairs (CoGTA) is specifically responsible for providing support to the NHTL. The National House of Traditional Leaders Act (No. 22 of 2009) states that this support may include infrastructure, finances, human resources, skills development programmes and administrative systems.⁴⁰

During former president Thabo Mbeki's tenure, a support document called the National Programme of Support for the Institution of Traditional Leadership (NPS) was developed. This support document was the government's response to what it perceived to be the role of traditional leadership in meeting the challenges of service delivery and development in rural communities.⁴¹ The four strategic priorities of the NPS are as follows⁴²:

- To support the institution of traditional leadership to improve governance, performance and accountability.
- To build capacity to the institution of traditional leadership to promote and enhance the involvement of the structures within the institution in the development processes of their communities.
- Reviewing and strengthening of the policy and regulatory framework in order to give greater attention and support to the institution of traditional leadership in respect of the implementation measures and processes.
- Addressing the structure and governance arrangements of the state in order to better strengthen, support and monitor the traditional leadership institution.

During the two-year period of this study, no evidence was available to substantiate any systematic implementation of the NPS, even though on the face of it, it seems like a crucial national policy document aimed at supporting and strengthening the institutions of traditional leadership in the country. The NSP clearly refers to the need for the institution of Traditional Leadership to function in a manner that embraces democratic principles and the entrenchment of a democratic culture.⁴³ Given its legislative mandate, it would be expected that CoGTA, through its Department of

³⁹ Interviews held with a Member of the National House of Traditional Leaders, Pretoria, September 2018.

⁴⁰ National House of Traditional Leaders Act 22 of 2009.

⁴¹ National Programme of Support for the Institution of Traditional Leadership: Briefing, 15 May 2007.

⁴² Ibid.

⁴³ Ibid.

Traditional Affairs, be the lead institution implementing the programme of support and strengthening of these institutions. However, during interviews conducted for this study, it became clear that some of the officials from the Department of Traditional Affairs were not sure about the capacity of the Department to provide that support for this institution. For instance, an official interviewed for this study was aware of, and made references to the NPS programme of support for these houses, but expressed doubt indicated that officials within the department often question whether the strategic priorities set out in the document were being addressed. This is clear evidence that the Department of Traditional Affairs was not providing the support and strengthening the institution of traditional leaders in line with its legislative mandate as well as the NPS.

Many of those interviewed for this study provided further evidence of the institutional weaknesses of the NHTL which serve to undermine its capacity to be a catalyst for change. Some of those interviewed pointed to the fact that most of the members are part-time members, which acts as a hindrance to the capacity of the house to do its work through its various internal committees. Others mentioned budget constraints as another major constraint to the operations and effectiveness of House and its committees. In general, it would appear that due to lack of capacity by the House in general, and its internal committee in particular, its ability to plan and carry out its programmes and projects successfully and report/account on these activities is severely limited. One traditional leader pointed to the lack of political will to elevate the status of the House.⁴⁴

Prior to interviews, it was assumed that committees in the National House had established clear working relationships with committees in Provincial Houses. However, this did not seem to be the case and as a result, the National House had taken a resolution to create forums that would allow national and provincial committees to meet and develop collaborative programmes. According to officials interviewed for this study, this resolution has effectively failed because of the detached nature of the relationship between the National House and Provincial Houses. One official added, "Many committee members in Provincial Houses also complained about the approach and decision-making processes of the National House ... while committees in the National House complained about the lack of respect displayed by committees in Provincial Houses".⁴⁵

This issue of budget constraints was identified as a key factor in the lack of capacity of the House committees to carry out their work regularly and conclude the work effectively. For instance, interviews with both officials and senior Traditional Leaders suggest that committees were unable to initiate their own programmes and projects, which meant that realistically, the House could only engage in meaningful practical activities by entering into collaborative partnerships with other stakeholders. In most instances, however, the contributions of the House on these collaborative partnerships are very limited, with many of the programmes and projects initiated by other institutions and not the House. Some of these partnerships were identified. One was with the South African Judicial Education Institution (SAJEI), where the contribution of the NHTL

⁴⁴ Interview with one of the senior Traditional Leaders from the NHTL, Pretoria, September 2018.

⁴⁵ Interview held with an official from CoGTA, Pretoria, September 2018.

was confined to inputs in the development of a curriculum for the training of senior Traditional Leaders in preparation for the Traditional Courts Bill. Another one was with the DSD regarding goals 4 and 6 of the National Strategic Plan (NSP) on HIV, TB and Sexually transmitted diseases (STIs). These goals respectively seek to do the following:⁴⁶

- Address the social and structural drivers of HIV, TB and STIs, and link these efforts to the National Development Plan (NDP)
- Promote leadership and shared accountability for a sustainable response to HIV, TB and STIs.

Another partnership with the NPA and the Department of Justice involved two programmes: *Indoni* and *Project Ndabezitha*. Interviews revealed that these were educational/awareness raising programmes around issues such as gender-based violence and substance abuse. However, the members of the Justice, Crime Prevention and Security Committee of the NHTL who were interviewed for this study did not appear to have meaningful knowledge of this partnership, particularly in relation to programmes on gender-based violence, even though the Committee would have been central to this partnership. The members of the House also mentioned planned partnership projects in the future, such as an *imbizo* with the Department of Education and religious sectors to discuss how sex education in schools could be rendered in a more comprehensive manner; with departments of Health (DOH) and Arts and Culture (DAC) on projects related to male initiation; department of Rural Development and Land Reform (DRDLR) on current national debates around land expropriation.

Although combating discrimination against the Lesbians, Gays, Bisexuals, Transsexuals and Intersexed people (LGBTI) community is included as one of the activities in the Social Development committee work plan of 2018/19. One traditional leader expressed concern about the often-faint voice of traditional leaders when issues relating to the LGBTI community as well as sex work are discussed in public debates. This was possibly because the LGBTI community and sex work are usually not accepted within many traditional/cultural communities under the jurisdictions of the houses of traditional leaders.

The Gender and Community Development Committee's quarterly report (for April-June 2018) makes reference to a presentation made to the House by a gender activist. The purpose of this presentation was to advise and assist the Committee in developing a programme on the empowerment of women in traditional leadership. However, such a programme was not mentioned during interviews. It is important to note that, ideally, the Gender and Community Development Committee is supposed to attend to both internal and external gender issues, however, none of the informants interviewed could refer to any internal gender issues having been addressed by the Committee.

⁴⁶ National Strategic Plan (2017-2022).

a. Programmes, projects and services related to child marriages

Gender inequality is a cause, a result and an exacerbating factor in child marriages.⁴⁷ Although the 2018/19 work plan of the Tradition, Heritage and Culture Committee includes among others, the task of identifying and reviewing cultural practices considered harmful. The issue of child marriages was not specifically identified as a priority problem that needed intervention from the National House despite current statistics that exist on the matter as indicated below. During interviews, many senior Traditional Leaders associated child marriages with the Eastern Cape Province. A Traditional Leader from the Eastern Cape further narrowed child marriages to a region called Lusikisiki in the Eastern Cape. The fact that, at a national level, the issue of child marriages was diverted to other provinces and regions was concerning; in 2016, 0.4% of bridegrooms and 6.3% of brides were under the age of 18 at the time of customary marriage.⁴⁸

Also, it is important to make the distinction between child marriages and *ukuthwala*. The practice of *ukuthwala* in South Africa involves the kidnapping of a girl or young woman by a man and his friends or peers with the intention of compelling the girl or young woman's family to approve marriage negotiations.⁴⁹ During interviews, another Traditional Leader from the Eastern Cape noted that many senior Traditional Leaders associate *ukuthwala* with the Eastern Cape because the word *ukuthwala* (which is commonly used when referring to these abductions) is derived from isiXhosa which is the predominant language in the Eastern Cape. Nonetheless, the afore-mentioned Traditional Leader acknowledged that child marriages as well as *ukuthwala* do occur in other provinces (not just the Eastern Cape) and are consensual in some cases. A report released by the Department of Justice and Constitutional Development (DOJ & CD) confirms that in some cases, an older form of this tradition is practised whereby the abduction is purely ritualistic whereby the girl and her abductor (usually of similar ages), who are in a consensual relationship, have been unable to secure the approval of the girl's parents.⁵⁰ Although senior Traditional Leaders in the National House expressed condemnation of child marriages, there appears to be no specific programmes, projects and services initiated by the NHTL to address such issues.

b. Programmes, projects and services related to sexual and reproductive health and rights

Available information gathered for interviews and fieldwork observation did not uncover much evidence of clear, systematic and concrete programmes and services by the NHTL addressing issues of health, welfare and reproductive rights of communities in those areas under the jurisdictions of the NHTL. However, the issue of combating teenage pregnancy was identified as a priority activity in the 2018/19 work plan of the Social Development Committee. Also, the 2018/19 work plan of the Tradition, Heritage and

⁴⁷ A Report on Child Marriages in Africa, 2018.

⁴⁸ University of Pretoria, Centre for Human Rights, (2018), A Report on Child Marriages in Africa, (www.chr.up.ac.za)

⁴⁹ Department of Justice and Constitutional Development 'Ukuthwala: Let's protect our children' (2009) available at http://www.justice.gov.za/docs/articles/2009_ukuthwala-kidnapping-girls.html as cited by South Africa submission to CHR.

⁵⁰ Stats SA (2016)

Culture Committee does identify for review the issue of cultural practices considered to be harmful. It also includes the promotion of safe cultural initiation practices which do have an impact on the sexual and reproductive health rights of those engaged in such practices. Regarding the practice of initiation, some of the senior traditional leaders interviewed argued that the attention given to female initiation is insignificant compared to that given to male initiation.

In terms of specific programmes, projects and services related to sexual and reproductive health and rights, no evidence of such programmes or project was uncovered. One traditional leader apparently took the initiative and entered into a partnership with the University of the Free State in the running of a foundation that advocates for responsible maternal and reproductive health. However, this is clearly an initiative that involves only one traditional leader and appears to be based on personal interests rather than the programme initiatives of the NHTL.

3.2. LIMPOPO PROVINCIAL HOUSE OF TRADITIONAL LEADERS

3.2.1. *Introduction and brief background on the house*

Section 183 of the Constitution provides for the establishment of Houses of Traditional Leaders in various provinces.⁵¹ The Limpopo House of Traditional Leaders was established in 1996 and is made up of senior traditional leaders who were nominated and elected from their respective local houses to the provincial house. To ensure a broader transformation of society Chapter 12 of the Constitution (SA Constitution: 1996) mentions that the institution of traditional leadership has a critical role to play, especially in rural areas.⁵² Therefore, the government needs to transform and support the institution of traditional leadership in accordance with the constitutional principles of democracy and equality. It is also the vision of government that traditional leadership represents customary interests of communities, whilst also playing a role in the socio-economic development that fosters nation building and accountability.⁵³ It is upon these values and principles that the Limpopo House of Traditional Leaders (LHTL) was established as an institution that seeks to address matters that affect traditional leaders and their respective communities.

Limpopo province has 185 senior traditional leaders who are all members of different local houses in accordance with their primary place of residence. Members representing the provincial house are nominated and elected by members of the respective five (5) local houses which are in the five districts namely: Capricorn, Mopani, Sekhukhune, Vhembe, and Waterberg District. According to the Limpopo House of Traditional Leaders Act No. 5 of 2005, the number of representatives in each district must be prescribed by the premier by proclamation from time to time. This culminates in the provincial house having 36 members, 9 of whom are women and 27 men.

⁵¹ S 183, Principle XII, Constitution of the Republic of South Africa, 1996 (hereafter the 1996 Constitution)

⁵² Constitution of the Republic of South Africa (Act 108 of 1996)

⁵³ Ntonzima, L & Bayat, M. S. (2012): The Role of Traditional Leaders in South Africa -A Relic of the Past, or A Contemporary Reality?

Furthermore, out of the 36 members of the House, three members are then nominated and elected to go and represent the provincial house at the national house as entrenched in the Act. At least one of the representatives of the provincial house nominated in terms of section 4 of the National House of Traditional Leaders Act of 1997 (Act No. 10 of 1997), must be a woman.⁵⁴ Thus, the LHTL aptly appointed one of its female members to represent it at the national house in accordance with the National Act of 1997.

The term of office applicable to all house members is strictly five years. After five years all houses (local, provincial and national) are disbanded and new members are nominated and elected. During the House election, a chairperson and the deputy who are the only full time members together with the other three (3) additional members will be nominated and elected. This group of members will form an Executive Committee which is the highest decision-making body of the House. The Executive Committee is the only committee that is appointed together with the three members who are sent to national to represent the house during the house elections. The executive committee is responsible for, among other things, the day-to-day running of the house, appointment of members to various committees, etc. The committee meets four times a month, every Tuesday. By law, during the provincial house election proceedings, the premier of the province and a judge must be present. The former ensures that the election proceeds as planned and that all the rules are followed accordingly whilst the latter administers the oath of office to all members.

In addition to the Executive Committee, the House also has the following six (6) committees created to help achieve its mandate:

- Planning and Cooperative Governance Committee
- Social Development and Gender Committee
- Traditional, Culture and Customs Committee
- Rules and Constitutional Development Committee
- Agriculture and Land Committee
- Initiation School Committee

All committees have chairpersons who ensure that they are doing the work they were established for. The appointment of members to these committees is random. This means that there is no specific criteria or method used when these appointments are made. Basically, the appointment of members is not based on their speciality, skills or interests. It is the chairperson's prerogative to appoint any member of the house to any committee available.⁵⁵ Such appointments will last until the end of the term of office for all members. The rationale behind the establishment of the committees is to help the LHTL fulfil its legislative mandate and discharge its functions. In principle, committees should be aligned with the committees at the national house and establish a good working relationship with government departments.

⁵⁴ Limpopo Government: Office of the Premier 2006. Limpopo House of Traditional Leaders Act, 2005 (Act No 5 of 2005)

⁵⁵ Interviews Held with Members of the Limpopo House of Traditional Leaders, Polokwane, September 2018

3.2.2. *Internal policies and processes for gender mainstreaming*

The objective of this subsection is to examine any existing internal policies, processes and mechanisms that seek to promote gender mainstreaming through empowerment of women in the Limpopo House of Traditional Leaders. For gender mainstreaming to take place, various measures need to be adopted to advance the participation of women and in turn, promote gender equality in the house. Two pieces of legislation make provision for the LHTL to ensure that women are adequately catered for in the house. These are the Traditional Leadership and Governance Framework Act, (Act No.22 of 2009) and the Limpopo House of Traditional Leaders Act, 2005 (Act No. 5 of 2005). In addition, the provincial house has its Revised Rules and Procedures that also make provision for women's representation and participation. These documents were identified as guiding frameworks for all future policies and rules that the house would want to enact.

Based on information received from participants, men make up the overwhelming majority of members at 75% with the remainder being women at 25%. When the research team asked why women's representation was so low no proper response was received. The low representation of women in LHTL may be regarded as an infringement of the Limpopo Houses of Traditional Leaders Act No 5 of 2005, which clearly states that "a third of the members of the provincial House must consist of women, provided that if the Premier is satisfied that there is an insufficient number of women to participate in the Provincial House, the Premier may, after consultation with the local Houses, determine a lower threshold."⁵⁶

During interviews, informants seconded from the Department of Cooperation Governance, Human Settlements and Traditional Affairs (CoGHSTA) strongly argued that for women to be nominated and elected to be members of the house they should be first appointed as senior traditional leaders by their respective royal families. It is worth noting that this happens only in exceptional cases, especially where there is no legitimate heir, and/or the legitimate heir is still too young to occupy the position. In such a case, a woman (usually the mother of the heir-in-waiting), would be appointed as regent, to hold the position until such time as the heir is old enough to take over.⁵⁷ Participants argued that even though some women are rightful heirs to the throne, they are often discriminated against by the members of the royal families and their communities who object to the transfer of power based on the grounds of culture and gender.⁵⁸

At the time when this study was conducted, there were riots in the Vhembe District where a disgruntled group of community members were protesting against Vhavhenda Princess Masindi Mphephu who is the daughter of the late Vhavenda paramount chief Tshimangadzo Dimbanyika Mphephu. It emerged from our investigation that, this group of protesters were refusing to be led by a woman claiming that it is unheard-of for Vhavhenda tribe to be ruled by a woman and that it is against their cultural practice.

⁵⁶ Limpopo Houses of Traditional Leaders Act NO 5. Of 2005

⁵⁷ Bekker, J.C. Seymour's Customary Law in Southern Africa. 5th Edition, Cape Town, Juta 1989, p. 237

⁵⁸ Interviews Held with Members of the Limpopo House of Traditional Leaders, Polokwane, September 2018

This matter is still before the courts and the Princess wants the court to declare invalid the customary law rule of male primogeniture that precludes women from succeeding to the position of traditional leader.

It further emerged through interviews that the LHTL established a task team that investigates any war of succession within royal families. However, this task team seemed to be as ineffective and dysfunctional as the others established by the LHTL. Participants argued that sometimes it's too risky for them to intervene when there is a war of succession or refusal of disgruntled community members to accept a woman as their leader. Evidently, in this instance, the National House of Traditional Leaders did not exercise its role of ensuring that the democratic principles of 'equality' and 'non-sexism' were observed and practised as no mediation efforts from their part were reported to have taken place during the riots in Vhembe. The low representation of women as senior traditional leaders in the province is obviously one of the consequences of the application of the cultural practice and principle of male primogeniture, whereby the eldest male child has the right to succeed the father as senior traditional leader.

Tribalism and unequal gender relations were cited as two of the major challenges that the LHTL was faced with. Participants highlighted that the leadership of the house rotated from one tribe to another.⁵⁹ So critical was this, that focus was shifted away from gender mainstreaming and placed more towards tribal quarrels. This has resulted in female senior traditional leaders crying foul because they often felt overlooked and unlikely to be appointed to key positions because some tribes do not allow women to be senior traditional leaders. It can be argued that despite gender equality and empowerment being legislative and constitutional imperatives, the LHTL has an internal organisational culture that sustains and perpetuates the dominance of men over women within the system of traditional authority.⁶⁰ This practice is an infringement of Section 9(3) of the Constitution which obligates the state to take practical measures to deal with discrimination and inequality.⁶¹ The National House of Traditional Leaders is also obligated to exercise its role of ensuring that the democratic principles of 'equality' and 'non-sexism' are always observed and practised. The Constitution made further provisions to enhance the protection of women's rights and attainment of equality, particularly in the workplace.⁶² Yet, some of the female informants interviewed for this study shared the view expressed above, instead expressing the view that their opinions and inputs were usually taken very seriously by their male counterparts during house sittings.

⁵⁹ Interviews held with members of the Limpopo HTL, Polokwane, September 2018

⁶⁰ Hartmann, H (2010). Capitalism, Patriarchy and Job Segregation by Sex., in J. Goodman (Ed) *Global Perspective on Gender and Work: Readings and Interpretations*, (pp. 54-62). Plymouth: Rowman & Littlefield Publishers Inc. PMID:201899258

⁶¹ In on Africa IOA 2013, *Clash of Mandates: Traditional and Gender Constitutional Provisions in South Africa*

⁶² Ibid

3.2.3. Programmes, projects and services for gender mainstreaming

In terms of Chapter 12 of the Constitution, Houses of traditional leaders must play a role in socio-economic development and contribute to nation building and be accountable. For this to be achieved the house must have well-functioning committees that will execute its mandate that includes gender mainstreaming. The data obtained through interviews states that the committees were the implementers of the programmes, projects, and services that the house had agreed to undertake. In principle, committees should meet at least once a quarter for them to plan and execute their duties. However, the informants insisted that this hardly happens as the members of most of the committees had never met in their various committees.⁶³ It was argued that some of these committees are dysfunctional, as a result of which no programmes, projects and services had been undertaken since new members of the house assumed office following the recent House elections in 2017. Only one committee – the Initiation School Committee - seemed to be active, although it did not concern itself with issues of gender mainstreaming.

It was clear that many of the informants interviewed for this study had very limited understanding and knowledge of gender mainstreaming. This was a clear indication that the House did not have in place any programmes, projects or even services aimed at promoting gender equality or women's empowerment. This is ironic given that one of the committees set up by the House is called 'Social Development and Gender Committee'. It also became clear that the House had not developed any policies around issues of gender transformation and women's empowerment, either internally or for communities falling under its authority and scope of responsibilities. In addition, no evidence was found of any formal training provided to its members and support staff on issues of gender equality and transformation. However, the House has been meeting the CGE provincial representative to discuss certain issues regarding women's participation in various activities.⁶⁴ Enquiries on the work programme and activities of the Social Development and Gender Committee did not reveal any evidence of a track record of work/activities related to gender mainstreaming or empowerment of women and girls. Available evidence also indicates that the committee had not had any meeting since the start of the new terms of office after the 2017 House elections. The Chairperson of the committee, interviewed for this study, cited budget constraints as a barrier for the Committee to carry out its planned activities.

However, it appears that this committee was not the only one malfunctioning. During interviews with various informants, it became clear that the problem was widespread, affecting other committees as well. Many informants argued that most committees never hold meetings to discuss work programmes and planned activities. One informant said the following about the capacity of the LHTL to discharge its responsibilities:

“Of course, it does function because there are committees that are operating. But what surprises me currently is that, for instance, this week of land use, the committee has never sat because they say it is dysfunctional. And according

⁶³ Interview held with Members of the Limpopo House of Traditional Leaders, Polokwane, September 2018

⁶⁴ Information provided by CGE Office, Limpopo Province.

to my knowledge, it should be functioning. There should have been someone updating us about its duties so that we stay updated. There are no updates even up until today”

It is quite clear though, that committees are not executing their duties as expected. Aside from budget constraints, there was clearly lack of communication and poor information dissemination that contributed towards a general state of lack of awareness of the functions and responsibilities expected of the members of the various internal House committees.

In terms of its relationship with the provincial Department of Cooperative Governance, Human Settlements and Traditional Affairs (CoGHSTA), it was revealed to the research team that the LHTL is given the status of Chief-directorate within the department. While this is not clear in terms its legal and Constitutional implications, in practice it often means that the House is entirely financially and administratively dependent on CoGHSTA, and therefore must report and account to that department for its programme activities and expenditures. The Department is usually, as was the case in this instance, the source of the funding for the House, including approvals of procurement/ expenditure requisitions and administrative support. In this instance, as is common with the other provincial Houses, even the support staff for the House is seconded from CoGHSTA. A Director from CoGHSTA, therefore, holds the position of Secretary of the House, which mirrors the arrangement at the NHTL. Given this situation, some of those interviewed for this study expressed exasperation at the clear lack of institutional autonomy by the LHTL. Some of the informants argued that all the decisions that the House takes must be approved by government officials who control the finances for the House.

At the time of the study, this post was vacant, and a Deputy Director was, therefore, acting in the position. The LHTL was also dependent on CoGHSTA in terms of its physical location, it was accommodated within the premises of the department, serviced by an administrative staff complement of about five officials seconded from CoGHSTA. Based on interviews with informants and other sources, it would appear that much of the budget allocations for the House is taken up by routine, statutory costs such as salaries and benefits, as well as other costs such as allowances, travel expenses, vehicles and accommodation. This means that very little of the budget is often left over for programme activities. Some of the informants insisted that the work programmes of the committees are solely financed through donations even though this is not always guaranteed. Moreover, one senior official interviewed for this study argued that the House is not allowed to solicit donations for its work programme activities.⁶⁵

a. Programmes, projects and services related to child marriages

Forced child marriage is a practice that has existed for centuries, compounded by gender inequality, tradition and poverty.⁶⁶ In South Africa, both the Sotho and Nguni groups practise some form of forced child marriage. For baPedi, who are part of the

⁶⁵ Interview held with CoGHSTA official, Polokwane, September 2018

⁶⁶ Mtshali, V. 2014. Forced child marriage practiced under the pretext of customary marriage in South Africa. Pretoria: UNISA

broader Sotho-speaking cultural group, the practice is called 'go thiba difate' while in IsiZulu, which is part of the broader Nguni cultural group, the practice is referred to as 'ukuganisela'.⁶⁷

The Limpopo traditional leaders interviewed for this study disputed the existence of such a cultural practise in the province. The informants insisted that in Limpopo such practices are unheard of among Limpopo communities. They insisted that the practice was prevalent in the Eastern Cape and KwaZulu-Natal.⁶⁸ Informants insisted also that no cases of forced child marriages have ever been reported to the LHTL or discussed as an issue in any of its meetings.⁶⁹ This is in stark contrast to the reality of child marriages that are reported in the media⁷⁰ regularly in communities across the Limpopo province, thus suggesting that the LHTL is not fully in touch with local communities' social challenges and issues of concern. One prominent case of underage marriage in the provinces concerned a 13-year-old girl who was married to a 57-year-old traditional healer, ostensibly to pay a debt to a local sangoma. Incidents or cases of under-age marriage are usually motivated by various factors, chief among which is a financial incentive, such as when parents force their daughters into marriages for financial reasons (i.e. bride price).

Early or childhood marriage can be detrimental to the health, welfare and reproductive rights of children. For instance, it often disrupts their educational prospects as those getting married are usually forced to leave school to become housewives. Given their young age, such brides are usually not mature enough to negotiate their sexual health and reproductive rights with their spouses, who are usually much older. In terms of their physical development, early childhood marriages can be physically harmful as the girls' bodies are usually not yet fully developed and sexually mature to engage in sexual activity and the sustain/endure the physical strain of pregnancy, which often leads to birth complications and risks of child and maternal mortality. Legally, the practice of under-age marriage also contravenes the provisions of domestic legislation such as the Children's Act, as well as relevant international instruments which South Africa ratified, such as the Convention to Eliminate All Forms of Discrimination against Women, the Convention on the Rights of the Child and others.⁷¹

b. Programmes, projects, and services related to sexual and reproductive health and rights

Despite the internal institutional weaknesses that the House has experienced as discussed earlier in this part of the report, particularly with its committee system, it would appear that the Initiation School Committee is the only one that was active at the time this study was being carried out. The committee is responsible for ensuring

⁶⁷ Mokwana, ML. 2009. The melting pot in Ga-Matlala Maserumule with reference to the Bapedi culture, language and dialects. Pretoria: UNISA

⁶⁸ Interviews Held with the Members of the Limpopo House of Traditional Leaders, Polokwane, 2018

⁶⁹ Ibid

⁷⁰ Mandy de Waal, 'Limpopo Child Bride: Sold into marriage, kept there by the system', 01/02/2013 (Daily Maverick, www.dailymaverick.co.za/article/2013-02-01)

⁷¹ Mtshali, V. 2014. Forced child marriage practiced under the pretext of customary marriage in South Africa. Pretoria: UNISA

that all initiation schools in the provinces, for both girls and boys, are registered and have valid permits. The committee also ensures that there is a relationship between initiation schools and the provincial Department of Health. The Department of Health is responsible for monitoring the running of these schools to reduce injuries including fatalities that often result from some of the illegal, clandestine initiation schools. The informants argued that the reason the committee was still active was that it did not require too much money for it to undertake its work related to initiation schools. The members of the committee usually travel to initiation schools using their own resources to monitor the work of the schools to ensure compliance with the law, and to ensure that the initiates are well looked after and safe.

However, like other committees, this committee also did not have a formal, coherent programme of activities related to the promotion of broader education and awareness around issues of sexual and reproductive health rights. The informants interviewed for this study argued that such activities would require significant resources which the committee did not have.

3.3. NORTHERN CAPE PROVINCIAL HOUSE OF TRADITIONAL LEADERS

3.3.1. Introduction and brief background on the house

The Northern Cape Provincial House of Traditional Leaders (NCHTL) was established in terms of Chapter 7 of the Northern Cape Traditional Leadership, Governance and Houses of Traditional Leadership Act No. 2 of 2007. The House was launched in 2009 and was in its third term⁷² at the time of this study. The NCHTL was established much later than the other six (6) Provincial Houses. Prior to this, the Northern Cape province had no areas under the authority of traditional leaders until the re-demarcation of borders in 2007, that resulted in the transfer of the John Taolo Gaetsewe District Municipality from the North West Province to the Northern Cape. All Senior Traditional Leaders in the Northern Cape were based in the John Taolo Gaetsewe District and were thus previously part of the North West Provincial House of Traditional Leaders. The primary tribe that is found in this District is Batswana.

The Northern Cape Department of Co-operative Governance, Human Settlements and Traditional Affairs (CoGHSTA) under its Traditional Affairs Directorate were responsible for providing administrative, technical and financial support to the House. Although an independent body established according to the Constitution, the House operates as a sub-unit of CoGHSTA's Traditional Affairs Directorate. Three (3) staff members⁷³ from CoGHSTA were seconded to support the House in its daily operations.

The Province had a total of eight (8) Senior Traditional Leaders, all of whom were automatically assigned to the House. A total of three (3) Headmen and Headwomen were also added to the House due to an insufficient number of Senior Traditional Leaders in the province. This was in line with a provision of the Provincial Act that states that

⁷² The term of office of the Provincial House is five (5) years and runs concurrently with that of the National House of Traditional Leaders.

⁷³ The Secretary of the House was appointed at Deputy Director level, and two administrative officers.

"Only in the event that there are not a sufficient number of senior traditional leaders, a Headman or a Headwoman may become a member of the Provincial House."⁷⁴ The three (3) Headmen and Headwomen were added in order to supplement the number of members in House committees. The research team was also informed that in the period before the 2017-2022 five-year term of office, representatives designated by each of the four (4) main Khoi-San groupings (the San, the Griqua, the Korana and the Nama) used to participate in the proceedings of the House and were permitted to attend and to contribute to all meetings and committees of the House. The House had however resolved to put this practice on hold until such a time that the legislation that recognises senior traditional leaders from the Khoi-San groups comes into effect. It was alleged that lack of such legislation used to be a source of endless conflict in the House as representatives from the Khoi-San consortiums did not have the same privileges and rights as Senior Traditional Leaders with an official status⁷⁵. The Traditional and Khoi-San Leadership Bill,⁷⁶ which has recently been approved by Parliament (February 2019), is the relevant legislation set to recognise senior traditional leaders from the Khoi-San groups.

In terms of the gender representation of the members of the House, eight (8) male Senior Traditional Leaders were represented in the House, while only one (1) female Senior Traditional Leader was represented; she was also the only woman who occupied the position of senior traditional leader in the province. One (1) Headman and two (2) Headwomen were also represented in the House. The two (2) Headwomen were also the only two in the province among fifteen (15) Headmen. In total, the House had a membership of eleven (11) traditional leaders.

Seven (7) committees were set up by the House to ensure that it discharges its functions and fulfils its legislative obligations. The first and most senior committee is the five-member Executive Committee which included among its members the Chairperson of the House, Deputy Chairperson as well as Leader of the provincial House Delegation to the National House. The membership of the Committee had only one female and four males. The other House Committees are:

- Justice & Crime Prevention
- Gender, Youth & People with disabilities
- Social development
- Planning & Cooperative Governance
- Land, Agriculture, Rural Development and Tourism
- Tradition, Heritage & Culture

The first three committees were functioned as a single committee, under one Committee Chairperson, except on occasions when specific subject matters required the three individual committees to function separately.

⁷⁴ Chapter 7, S 34 (2) Northern Cape Traditional Leadership, Governance and Houses of Traditional Leadership Act No. 2 of 2007.

⁷⁵ Interviews held with officials from CoGHSTA, Kuruman, October 2018.

⁷⁶ The Traditional and Khoi-San Leadership Bill, B23-2015

Apart from the office space that was occupied by the support staff of the House, the House did not have any dedicated infrastructure or tools of the trade for its operations. As a result, meetings, including ordinary quarterly meetings of the House were held between Kimberly (Provincial Legislature) and Kuruman (Ga Segonyana Local Municipality Building). Based on the Provincial Act⁷⁷, "The Provincial House must meet at the seat of the Provincial Legislature, unless the Premier directs otherwise". The building of the Provincial Legislature was undergoing repairs at the time of the study hence meetings were being held at Kuruman during that period⁷⁸.

3.3.2. *Internal policies and processes for gender mainstreaming*

Information and insights obtained during interviews and site visits to the NCHTL show that very little effort was put into developing the necessary policies and other relevant mechanisms to ensure that gender mainstreaming is prioritised by the House. This is because apart from Section 37 (5) of the Provincial Act which states that "A third of the members of the Provincial House of Traditional Leaders must consist of women: Provided that if the Premier is satisfied that there is an insufficient number of women to participate in the Provincial House the Premier may, after consultation with the Local Houses of Traditional Leaders, determine a lower threshold" and Section 42 of the same Act which says "at least one representative of the Provincial House of Traditional Leaders nominated as contemplated in the National House of Traditional Leaders Act, 1997 (Act No. 10 of 1997) must be a woman, unless the Premier, after consultation with the Provincial House of Traditional Leaders, established that there is no woman traditional leader", there were no other mechanisms or systems in place to enhance the gender transformation of the House. The existing mechanisms (2 sections of the Provincial Act stated above) were also flawed in that while they allowed for the existing female traditional leaders to be represented in the House, they also gave leeway to the Premier to reduce women's quotas by accepting that there are insufficient numbers of female traditional leaders, instead of empowering the Premier to ensure that more female senior traditional leaders are appointed at community level through Royal Households (or through other relevant processes) in order to fill such positions and increase the representation of females in the provincial House of Traditional Leaders.

Nonetheless, it was due to these provisions of the Act⁷⁹ that the two (2) Headwomen in the province were automatically assigned to the House, subsequently bringing up the number of female members from one (1) to three (3). It was revealed that prior to the 2017-2022 House term there were no Headwomen whatsoever in the province, which had led to three (3) Headmen being added to the House to augment its insufficient numbers. The Headwomen were inaugurated in 2015 and 2016 respectively and were thus incorporated into the House when it reconstituted for the 3rd term in an attempt

⁷⁷ Chapter 7, S 38 (2) Northern Cape Traditional Leadership, Governance and Houses of Traditional Leadership Act No. 2 of 2007.

⁷⁸ Interviews held with Members of the Northern Cape Provincial House of Traditional Leaders, John Taolo Gaetsewe Municipal District, October 2018.

⁷⁹ Northern Cape Traditional Leadership, Governance and Houses of Traditional Leadership Act No. 2 of 2007.

to comply with the 1/3 women's quota.⁸⁰ It was however argued that Headwomen could not be part of the delegation of three (3) members to represent the province at the National House because of restrictions in the national legislation regarding the level of seniority required for membership of the National House. The restriction is that representation at the National House of Traditional Leaders is reserved exclusively for senior traditional leaders. This resulted in the NCHTL sending an all-male delegation to the National House. The only female traditional leader in the provincial House who would have qualified to be part of the delegation to the National House at the time was already serving as Chairperson of the Provincial House.⁸¹ However the application of this restriction in this instance was either discriminatory in its effect if not intention, or suggests a broader problems of inconsistency of its application across different provinces, given that the Free State Provincial House was able to appoint and send a daughter (referred to as a Princess) of a Senior Traditional Leader who passed away. The Princess also served as leader of the delegation to the National House.⁸² Furthermore, Section 3 (1) (a) of the National House of Traditional Leaders Act No. 22 of 2009 states that "of three persons who are senior traditional leaders elected by each provincial house: Provided that where on good grounds shown or due to an insufficient number of senior traditional leaders in a provincial house, such provincial house may elect Headmen or Headwomen". It is plausible that the NCHTL may be unaware of this provision of the National House Act or could simply be ignoring it.

The poor representation of women in the House was attributed to the customary practice of male primogeniture, whereby the eldest son is entitled to be the rightful heir to the throne and girl children are excluded. A number of key informants were in support of this patriarchal practice, with preservation of culture and tradition being used as a scapegoat.⁸³ This can be observed as an indication of a lack of knowledge of democratic principles of 'equality' and 'non-sexism', and that the Constitution and the law are superior to culture and tradition in South Africa. Furthermore, according to the National House of Traditional Leaders Act No. 22 of 2009, it is the responsibility of the NHTL to "cooperate with the provincial houses of traditional leaders, to promote (i) the role of traditional leadership within a democratic constitutional dispensation".⁸⁴ The National House is further accorded powers by the National House of Traditional Leaders Act to ensure "the transformation and adaptation of customary law and customs so as to comply with the provisions of the Bill of Rights in the Constitution, in particular by (aa) preventing unfair discrimination; (bb) promoting equality; and (cc) seeking to progressively advance gender representation in the succession to traditional leadership positions".⁸⁵ The National House had failed to exercise its legislative powers in this regard, while Royal Families were fully blamed for the lack of gender transformation in traditional leadership positions of the province.

⁸⁰ Women make up 27% of the membership of the House, which falls short of the desired 1/3 of women's representation.

⁸¹ Interviews held with Members of the Northern Cape Provincial House of Traditional Leaders, John Taolo Gaetsewe Municipal District, October 2018.

⁸² Information from interviews at the National House of Traditional Leaders

⁸³ Ibid.

⁸⁴ National House of Traditional Leaders Act No. 22 of 2009, S11. (1).a

⁸⁵ The National House of Traditional Leaders Act No. 22 of 2009, S11(1)a.viii

The CGE could not obtain a list of the gender composition of the membership of the House Committees from CoGHSTA; the interviews were not helpful either as most of the members could not remember the names of the committees that they were part of. Nonetheless, even under this cloud of confusion it could be determined that two (2) of the committees were chaired by women; these were the Executive Committee as previously mentioned, as well as the Justice and Crime Prevention; Gender, Youth & People with disabilities and the Social development Committees which had been merged to form one committee. It came as no surprise that the merged committee was headed by a woman given that issues of social development and gender equality are stereotypically seen as women's issues. Nonetheless the incumbent was not fully conversant with the role, apparently because was never properly inducted at the time of appointment into the position.⁸⁶ Furthermore, unlike the Rules and Orders of the National House that provide detailed guidelines of the functions and roles of Committees, the NCHTL Rules and Orders do not provide any information.

The appointment of a woman into the position of the chairperson appeared to be purely random as the House did not have any leadership succession policy that takes aspects of gender into consideration. The Chairperson, who had served as the Deputy Chairperson in the previous House term had been democratically elected into her position by the House. The absence of clear policy commitments, however, makes it difficult to predict the possibility of a woman ever holding this position again in future. This is because clear policies, concrete objectives and targets, and a clear plan of action are basic conditions for the development of a successful gender mainstreaming strategy. Without these elements in place, it becomes difficult to anticipate any gender equality outcomes.

The responsibility to advise and support the House on the development of gender mainstreaming policies and related capacity building initiatives reside with CoGHSTA, particularly the members of staff appointed specifically to support the House in its operations. The role of the secretariat of the House was however confined to mere administrative support and related functions. As a result, the awareness of relevant gender mainstreaming legislative frameworks and processes was lacking among some of the members of the House interviewed for this study. It is important to note also that the level of education among the Traditional Leaders was limited. This is in addition to the fact that the position of traditional leadership is inherited, and does not require high level formal educational qualification, expertise and skill/training in any specific area of policy except perhaps knowledge of the specific cultural traditions of the community and social group they belong to. These factors appeared undermined the capacity of the House of function effectively in general, but also in terms of leading initiatives aimed at promoting gender mainstreaming and transformation. Members of the House were therefore not fully aware of the need for the institution to comply with and take the necessary steps to promote the objectives of legislative frameworks relating to gender mainstreaming and gender transformation, including the rights of women to equality.

⁸⁶ Interview held with a Member of the Northern Cape Provincial House of Traditional Leaders, John Taolo Gaetsewe Municipal District, October 2018.

An informant interviewed for this study revealed that capacity building formed a critical part of the technical indicators of the NCHTL.⁸⁷ Yet it was not clear if there had been any internally driven training programmes that had taken place in the 2018/19 financial year. What became clear was that issues of gender equality had never formed part of any training endeavours of the House since its inception. The CGE as part of conducting this study in the province was requested to roll out an awareness raising workshop on the concept of gender mainstreaming. The workshop which was later reduced to an hour's presentation on the agenda formed part of an array of presentations by various stakeholders on the day. It became clear after the engagement that more detailed training courses on issues of gender were needed in the House.

A three-day workshop was reportedly convened by the Department of Justice in 2018, focusing on the rights of the Lesbians, Gays, Bisexuals, Transsexuals and Inter-sex people (LGBTI). It would appear that traditional leaders in the province (Senior Traditional Leaders, Headwomen and Headmen) also attended. The purpose of the workshop was to educate traditional leaders about the unfair discrimination and marginalisation of LGBTI communities and to ensure that these communities are not unfairly discriminated in their traditional communities.⁸⁸ Yet it would appear that the workshop did not have much impact in terms of increasing knowledge and awareness of the rights of members of the LGBTI community, or even altering attitudes among some of the traditional leaders toward members of this community. This observation is based on the interactions between the CGE team and the Traditional Leaders in the province, which occurred not long after the workshop referred to above.

In terms of the treatment of female traditional leaders in the proceedings of the House, the informants who were interviewed for this study insisted that women and men received equal and fair treatment. However, based on the assessment and analysis of all the insights gained from interactions with various key role players, including interviews and site observations, the weight of evidence does not support this view. One of the incidents observed at the time of the visit to the House (on the day a presentation on gender mainstreaming was made to the House) was when a male senior traditional leader left without requesting permission from the Chairperson to be excused from the proceedings as required by the Rules and Orders of the House. The Chairperson subsequently expressed her disapproval, stating that she felt disrespected as a woman. Some of the female traditional leaders interviewed for this study clearly felt that their gender was used against them by some of the members of the Royal Families, especially in cases involving contestations of succession to the throne. Traditional leadership positions were generally an issue of ongoing contestation in the province, and in the case of women, it was clear that the issue of gender was constantly used to exclude them and/or violate their rights in the name of culture and tradition.

⁸⁷ Interviews held with officials from CoGHSTA, Kuruman, October 2018.

⁸⁸ Report on The Workshop Held by The Dept Of Justice for Traditional Leaders, 21 August 2018.

3.3.3. Programmes, projects and services for gender mainstreaming

Houses of traditional leaders in the democratic constitutional dispensation have roles that include but are not limited to socio-economic development; service delivery; social wellbeing and welfare of communities and nation-building.⁸⁹ While the NCHTL's basic internal structures such as its management structures and committees were operating, its effectiveness in discharging its constitutional mandate was questioned by some of the informants interviewed for this study. One informant went as far as describing the House as "*totally dysfunctional*",⁹⁰ insisting that the Committees of the House existed only in name as not much meaningful work had been carried out since the House came into existence. Informants insist that the meetings of the House had been turned into platforms for raising complaints and grievances rather than for driving the core business of the House. Informants also insisted that the agendas of House meetings are always dominated by the same issues, complaints and grievances about late payments of salaries, allowances and benefits, including problems about vehicles and other related issues. Informants also argued that the House subject Committees had not held meetings since the 2017 House elections.⁹¹ Based on these claims, it would seem that the Northern Cape committee system is clearly dysfunctional, unable to carry out programme related activities of the house.

Inadequate budget allocations were also cited as the main barrier to the effective functioning of the House committee system. The information obtained from the interviews indicated that most of the funds allocated to the House were used to pay salaries, purchase vehicles, pay petrol allowances, cell phones and seating allowances. Informants, however, complained that these allowances were hardly ever paid.⁹² It is therefore not clear what the funds were being used for given that the House and its committees were declared dysfunctional. The funds of the House were managed and dispatched through the government department of CoGHSTA. This was so despite the House being an independent statutory body. As a result, the House did not seem to have any control over the usage of its budget. This appendage⁹³ of the House to the Department caused a lot of friction between traditional leaders and government officials, as traditional leaders felt that the status of the House was being undermined. It was also revealed in one of the interviews that the Department had totally subdued the House under its authority and that the top management of the Department was of the view that traditional leaders were answerable to them and not the other way around. This lack of control over resources was believed to be the main cause of the dysfunctionality of the House.⁹⁴ Some of the key officials indicated that unsuccessful

⁸⁹ S 11 (1) National House of Traditional Leaders Act No. 22 of 2009

⁹⁰ Interview held with an official from CoGHSTA, Kuruman, October 2018.

⁹¹ Interviews held with officials from CoGHSTA & Members of the Northern Cape Provincial House of Traditional Leaders, Kuruman, October 2018.

⁹² Ibid.

⁹³ The strategic plans, annual plans and annual reporting of the House fell under the Traditional Affairs Unit. The Unit was also responsible for managing the Human Resources aspect of the House.

⁹⁴ Interviews held with officials from CoGHSTA & Members of the Northern Cape Provincial House of Traditional Leaders, Kuruman, October 2018.

attempts had already been made to resolve the issue of the autonomy of the House from the provincial department (i.e. CoGHSTA) through the Office of the Premier, including requests for intervention by the National House of Traditional Leaders.

One positive development though, based on information provided by officials from the House, is that as part of the strategy to revive committees, particularly the gender committee, the Chairperson of the NCHTL had visited the provincial House to provide direction and advice. The report on the visit shows that the Chairperson expressed deep regret at the failure of committees responsible for championing women empowerment and gender equality programmes within the institutions of traditional leaders. The Chairperson also appeared to express misgivings over the fact that the committees were not empowered enough to address some of these challenges adequately. He called for partnerships with key role players in the gender sector such as the Minister in the Presidency responsible for Women, the CGE, and NGOs working in both the gender and traditional sector. The Chairperson also raised concern regarding the scourge of violence against women in South Africa.

The Chairperson through his visit tasked the NCHTL to resolve on championing women empowerment and gender equality as a programme which will amongst others, deal specifically with the following:

- Representation within the structures of traditional leaders.
- Empowerment Programmes for Women (Girl Child, Young Girls, Wives of Traditional Leaders, Women in Traditional Leadership Structures, widows and the Elderly Women).
- Build capacity for all women within traditional leadership.
- Encourage women to actively participate in socio-economic development projects.
- Come up with impact-based programmes to reach out to the plight of women in innovative ways and through partnerships.⁹⁵

At the time this study was conducted, there were no progress reports or plans in place that indicate how these proposals will be implemented.

a. Programmes, projects and services related to child marriages.

It is common knowledge that the phenomenon of child marriages is not as prevalent in the Northern Cape as it is in other parts of the country, such as in the KwaZulu-Natal, Gauteng and Eastern Cape provinces. But to argue that the practice does not exist at all in the province would be untrue. The data collected by Stats SA through their Community Survey in 2016 revealed the following trends about child marriage in the Northern Cape:

⁹⁵ Report on the Engagement with Chairperson of the National House of Traditional Leaders during the Sitting of the Provincial House, 22 August 2018.

GENDER RIGHTS UNDER CULTURE RITES:

Assessing women's empowerment through Houses of Traditional Leaders in South Africa

Table 2: Number of children aged 12-17 by marital status and sex, Northern Cape

	Male	Female	Total
• Legally married (include customary, traditional, religious, etc.)	147	87	233
• Living together like husband and wife/partners	66	371	437
• Divorced			
• Separated but still legally married		14	14
• Widowed		33	33
• Single but have been living together with someone as husband/ wife/ partner	732	940	1672
• Single and have never lived together as husband/wife/ partner	68533	62753	131286
• Unspecified		79	79
Total	69478	64277	133754

Source: Stats SA (2016)

The above table shows that a total of 233 children (147 males and 87 females) aged between 12 and 17 were married, including through customary, traditional and religious rites. Furthermore, 437 children (66 males and 371 females) were living together like husband and wife; 14 girls had been separated yet still legally married; while 1672 children (732 males and 940 females) were single but had been living together with someone as husband/wife/partner before. The figures are not disaggregated by districts and therefore make it difficult to understand the extent to which the John Taolo Gaetsewe District, where traditional leaders in the Northern Cape were based was affected. The House nonetheless, was not aware of these statistics as claims were made that child marriages did not occur in the province.⁹⁶ This apparent lack of awareness of the scourge under-age/child marriages is in stark contrast to existing public debates about these practices and the consequences on the lives of children.⁹⁷

b. Programmes, projects and services related to sexual and reproductive health and rights

Traditional leaders have an important role to play in the achievement of sexual and reproductive health of their communities. Traditional communities in the rural areas often face challenges that pertain to lack of resources, discrimination against women and girls, traditional gender norms and reluctance to address issues related to sexuality openly and comprehensively⁹⁸. Furthermore, such communities tend to uphold social norms that may hinder the enjoyment of sexual and reproductive rights of individuals, such as the right to control one's own body and defining one's sexuality. The NCHTL however, did not have any initiatives in place to address the sexual and reproductive health needs and rights of its communities.

⁹⁶ Interviews held with officials from CoGHSTA & Members of the Northern Cape Provincial House of Traditional Leaders, Kuruman, October 2018.

⁹⁷ See the Overview section of the report.

⁹⁸ The Lancet Accelerate progress -sexual and reproductive health and rights for all, May 2018.

Opportunities were available for the House to tackle such issues but were not optimally utilized. For example, the House had access to male initiation schools which could have been used to tackle rigid forms of masculinities that prevent men from seeking health care related to HIV, Sexually Transmitted Infections (STIs) and prostate cancer. This is because according to the Lancet Commission, toxic notions of masculinities are a leading barrier to men's access to sexual and reproductive health services, and men from the Northern Cape are no exception.⁹⁹ The House, through its committee on Gender, could play an important role in engaging with men on issues of welfare, sexual health and reproduction, and act as a role player in encouraging both men and women to seek assistance from relevant government departments on issues of substance abuse, general health and sexual reproductive rights. The issues of violence against women, including femicide, could also be addressed through this platform. The CGE provincial Office in the Northern Cape noted the high rates of femicide between 2014 and 2015 as reported in the media report in the province.¹⁰⁰

In addition to this, Traditional Councils hold frequent meetings with communities and each member of the House belongs to a Traditional Council. It was observed during one of the interviews that more women were present in such meetings than men. The House, through partnerships with the Department of Health and related civil society organisations, could thus use such platforms to reach out to women to promote contraception use and access to safe abortions; assert women of their autonomy regarding their sexual behaviour, and encourage health screenings such as pap smears and HIV screenings. Manala and Massyn have found that the Northern Cape had the lowest (40.3%) coverage of cervical cancer screenings in comparison to other provinces in the 2017/18 financial year, which is a cause for concern considering the growing prevalence of the disease.¹⁰¹ The House was however detached and showed no interest in issues of concern for its communities.

3.4. FREE STATE PROVINCIAL HOUSE OF TRADITIONAL LEADERS

3.4.1. *Introduction and brief background on the house*

The Free State House Traditional Leaders is currently accommodated at the Free State Provincial Legislature building as it does not yet have its own premises. The House was established in terms of the House of the Traditional Leaders Act number 6 1994. The act was enacted on the 17th of October 1994 to grant the House the powers and functions as provided for in the Constitution of the country. However, the Free State House of Traditional Leader started operating in 1997. The Constitution, in terms of Section 211 and 212 (Chapter 12), provides for the establishment of the Houses of Traditional Leaders in South Africa.¹⁰² Currently, the Free State Provincial House of Traditional Leaders consists of fifteen (15) members. At the time this study was carried out, the gender profile of membership of the House was four females (i.e. 26.7 %) and eleven males (i.e. 73.3%).

⁹⁹ Ibid

¹⁰⁰ CGE, A dossier based on reports from the DFA newspaper on cases of gender-based violence in the Northern Cape, 2015.

¹⁰¹ Makua, M & Massyn, N, Reproductive Health, Health Systems Trust (January 2019): 155-166.

¹⁰² Provincial Gazette, No.44. 1994. House of Traditional Leaders Act

Among the four female senior traditional leaders, two are members of the Executive Committee of the House, while one is amongst the three provincial representatives at the National House of Traditional leaders. Currently, only the chairperson and the deputy chairperson are permanent members of the House while all others are part-time members – a situation that is similar to all the other provincial Houses.

However, three (3) more members from the Khoisan traditional group will soon be added to its membership, as soon as the new Bill¹⁰³ providing for the formal recognition of the status of the traditional leadership structures of the Khoisan, is implemented. This will bring the total number of the membership of the Free State House of Traditional Leaders to eighteen (18). The membership of the house comprises traditional leaders nominated by the traditional authorities of the five tribes, also referred to as communities. The inclusion of the Khoisan will increase the number to six tribes/communities. These are:

- Bakwena ba Mopeli (Qwa-Qwa)
- Makgolokwe (near Harrismith)
- Batlokwa ba Mokotleng (Qwa-Qwa)
- Batlokwa ba Makgalong (Vrede) and
- Barolong bo Seleka (Thaba Nchu)
- Khoisan¹⁰⁴

Each traditional authority from all these tribes is mandated to nominate three representatives from their respective tribes, which translates into equal membership for all the tribes represented in the Provincial House of Traditional Leaders. The Provincial Gazette, No.44. 1994. House of Traditional Leaders Act stipulates that *Batlokwa ba Mokotleng, Bakwena ba Mopeli and Barolong ba Seleka* are eligible to nominate three traditional leaders each. On the other hand, *Batlokwa ba Makgalong and Makgolokwe* traditional authorities may nominate one traditional leader each and two representatives from their tribes respectively.¹⁰⁵ The reason for this is that some of the tribes do not have the required number of senior traditional leaders. Therefore, the provision allows the tribes affected to nominate traditional leaders of lower rank instead, such as Headmen or Headwomen.¹⁰⁶ The FSHTL, like the Northern Cape Provincial House of Traditional Leaders, has members that are not Senior Traditional Leaders.

Currently, the Free State House of Traditional Leaders is led by a female Chairperson, deputised by a male Deputy Chairperson. At the time of the study, there were only four women representatives out of its fifteen members. This is slightly below the quota target (i.e. 5) of one-third female membership as required by the National House of Traditional Leadership Act. As is the case with all the other provincial Houses, the

¹⁰³ RSA, Traditional and Khoi-San Leadership Bill, B23-2015

¹⁰⁴ Ibid

¹⁰⁵ This information came out of the preliminary meeting that was held by the team members with the Executive Committee in Bloemfontein on the 11th July 2018.

¹⁰⁶ Ibid

FSHTL is supported (i.e. financially, administratively, etc.) by the provincial Department of Cooperative Governance and Traditional Affairs (CoGTA). It is the responsibility of the provincial Department of Cooperative Governance and Traditional Affairs, among others, to strengthen cooperative governance and support municipalities and traditional leadership through integrated planning and development, partnerships, research, and monitoring and evaluation.¹⁰⁷ The House therefore executes its mandate through working with different Departments and Municipalities to service the people on the ground. The House further works with different civil society organisations and has a close working relationship with the Mountain Kingdom of Lesotho as they share borders and most of the issues such as initiation schools and human trafficking filter through the porous borders, which requires the two countries to work together.¹⁰⁸

As indicated above, the national Parliament is currently processing the Traditional and Khoi-San Bill which recognises the traditional leadership structures of the Khoisan community in the province.¹⁰⁹ The Bill also makes provision for three traditional leaders from the Khoi-San community to be nominated as members of the FSHTL, which will raise the total membership of the House from 15 to 18. At the time of the study.

3.4.2. *Internal policies and processes for gender mainstreaming*

This section examines the internal policies, processes and practices aimed at promoting gender equality and gender mainstreaming within the FSHTL and including within the traditional sector in general in order ensure that the House complies with Constitution, national policy and legislative framework on gender equality. For instance, the Preamble to the Traditional Leadership and Governance Act 2003 states that "...gender equality within the institution of traditional leadership may progressively be advanced..."¹¹⁰ This provision is a clear legislative recognition of the need for the advancement of gender equality within traditional leadership structures. The Act further imposes an obligation by stating that traditional leadership *must* "...promote freedom, human dignity, and achievement of equality and non-sexism..."¹¹¹ The Act also mandates a 30% quota for the representation of women in the membership of Houses of Traditional Leaders.

As indicated above already, the current female members of the FSHTL do not meet the 30% quota requirement. The explanation provided by informants interviewed for this study was that due to the patriarchal nature of traditional leadership structures, it is difficult to get women to be elected from the traditional councils and traditional authorities. As already indicated above, at the time the study was being carried out, the FSHTL had only four female members, none of whom is a traditional leader. Three of them are Headwomen, and the fourth is the widow of a deceased Traditional Leader.

As indicated above, the FSHTL relies heavily on the support (i.e. funding, administrative and technical) of the provincial Department of CoGTA. Logically, it would be expected that as part of its technical support to the House, the provincial Department of CoGTA

¹⁰⁷ Interview with FSHTL CEO, 16 October 2018

¹⁰⁸ Interview with various informants from the FSHTL

¹⁰⁹ Interview with A member of the Executive Committee of the House, 16 October 2018

¹¹⁰ Traditional Leadership Act No. 41, 2003. Gazette, 19 December 2003

¹¹¹ Ibid

would assist by raising knowledge and awareness of the members around current legislative and policy obligations to promote gender equality and transformation within traditional leadership structures. Based on interviews conducted with officials from the provincial Department of CoGTA, the department has its own internal policies such as Gender Policy and Sexual Harassment Policy which apparently apply to the FSHTL. However, no evidence was available to show that these policies have been applied to real cases. According to informants, no cases of sexual harassment or gender discrimination had ever been reported to the House, so the policies had never been applied to deal with real cases.

Interviews and discussions with various informants did not seem to provide a consistent and coherent picture about current internal policies, processes and practices in terms of which the House could address the need to promote gender mainstreaming or address related challenges. However, it was clear that the House did not have its own internal policies in this regard, with many informants claiming that the House relied on the policies of other departments such as Department of Justice or the government policy framework on the gender equality.

3.4.3. *Programmes, projects and services for gender mainstreaming*

The FSHTL has five committees that are responsible for the day to day running of the House as well as executing programme work activities in line with the mandate of the House. These committees include:

- Executive Committee
- Internal Arrangement Committee
- Social Development Committee
- Tradition Custom and Culture Committee
- Constitutional Development Committee

For this report, greater focus is on the work of the Social Development Committee and the Traditional, Custom and Culture Committee because the subject areas of the two committees are consistent with the focus areas of this study. Their subject areas would include health, social development, welfare and reproductive issues. Therefore, if the FSHTL prioritised these issues, this would be reflected, largely but not exclusively, through the programme work and focus areas of these two committees. For instance, an outline of the aims and objectives of the Social Development Committee includes the following functions and responsibilities:

- Responsible for the social matters of communities
- Responsible for the safety of rural communities
- Liaising with stakeholders regarding the developmental needs of communities
- Facilitating the establishment of projects in rural communities
- Ensuring the involvement of Traditional Leaders in the fight against HIV/ AIDS

- Involvement and participation in the Integrated Development Plan (IDP) and IRDSP

A cursory analysis of the functions and responsibilities shows that these are largely broad and vaguely defined, and that most of them tend to entail the role of coordination, liaison, collaboration and facilitation rather than actual direct responsibility for carrying out the activities identified. It is not clear if the scope of functions and responsibilities as outlined above would empower the committee to intervene and impose penalties where violations particular cultural practices violate the rights of community's members, such as the rights of women and girls to gender equality, privacy, bodily integrity and protection from harm caused by harmful traditional practices. However, this is understandable given the limited capacity, lack of resources and poor clarity of functions for the Houses of Traditional leaders. Some of the informants¹¹² claimed that the two committees did have activities consistent with the need for gender equality.

Regarding the work of the Social Development Committee, a number of activities were mentioned. One example mentioned was a campaign to raise awareness of gender-based violence and violence against women. As part of this, the Committee had initiated a campaign called 'blessers must fall', aimed at deterring young women and girls to engage in inter-generational sexual relationships. The campaign was also aimed at addressing other social, health and reproductive rights-related issues such as gender-based violence, sexually transmitted diseases, teenage pregnancies and others. These problems often result from these types of asymmetrical relationships where young women, due to their financial dependence on older men, are not able to defend their reproductive health rights, including negotiating safe sex. Informants indicated that more emphasis went into this campaign due to the prevalence of teenage pregnancies in the province.¹¹³ Another activity that the committee is said to have supported entailed teaching old men and women sewing skills, making crafts and cooking healthy food thus promoting self-reliance and income generation among the group. However how these campaigns were being carried out on the ground, if there were any financial resource and capacity implications for the committee.

Further claims were made by some of the informants that the FSHTL worked closely with men's and faith-based organisations, provincial government departments such as Health, Social Development and the SAPS. It was also claimed that the House had a working partnership with the DSD around sexual health and reproductive rights issues, with advocacy around circumcision identified as one of the areas of partnership with the DSD while the Department of Health provided guidelines to regulate the practice of circumcision at initiation schools in the province.

Other minor activities of the Social Development Committee were mentions, such as a cooperative for the economic empowerment of women and a formal partnership with a nongovernmental organisation called Foundation on Maternal Health, working with university students to teach learners about maternal health and parental responsibility.

¹¹² Interview with Committee Support Staff Member, 16 October 2018

¹¹³ Interview with Social Development Committee Member, 16 October 2018

The aim of the latter is ostensibly to deter learners from engaging prematurely in sexual activities which could lead to teenage pregnancies.

Regarding the work of the second committee on Tradition, Customs and Culture, its aims and objectives were outlined as follows:

- Data collection on African cultures
- Compile and publicise traditional/cultural events and historic activities taking place with the province.
- Revival of customs and good cultural activities in the Province.
- Interaction with South African Heritage Resource Agency (SAHRA) on the identification of Heritage sites that need preservation.

Once again, a quick and cursory analysis of these functions clearly shows that the scope of the powers of this committee is limited to mere information gathering, involvement in and promotion and preservation of cultural customs, traditions and related activities. None of these functions and responsibilities seems to extend to interventions and imposing of penalties including fines, or even disallowing any customary activities in cases where such activities are harmful to the rights and social welfare of community members.

While this committee is clearly responsible for dealing with issues of cultural practices and traditions, which would include the work of initiation schools around the practice of circumcision, it is not clear how this work relates to the work of the Social Development Committee which is also involved in the work of initiation schools around the same practice.

The informants interviewed on the work of this Committee insisted that the problem of under-age/child-marriages as a cultural practice is not prevalent in the province, and therefore not a priority issue for the Committee. Instead, they pointed to the issue of illegal circumcisions as the biggest challenge facing the House and the Committee. The main challenge here seems to be that the practice has become infiltrated by money making syndicates and gangsterism and conflicts that place the lives of initiates in danger. Yet it is not clear if the committee has the capacity and power to intervene and deal with this challenge from a cultural practice perspective, beyond the mere identification of the problem. Informants¹¹⁴ were keen to explain the magnitude of the problem of gangsterism that has infiltrated the practice, with conflicts and wars spilling across from neighbouring Gauteng province and across the border into Lesotho.

¹¹⁴ Interview with Member of the Tradition, Culture and Customs Committee, 17 October 2018

4. OVERVIEW OF KEY FINDINGS AND CONCLUSIONS

Our assessment of the extent of gender mainstreaming and transformation in the four (4) Houses of Traditional Leaders covered in this report (i.e. National House of Traditional Leaders, Limpopo, Northern Cape and Free State Houses of Traditional Leaders) led to findings that are largely similar to those revealed in the CGE's first report of this study published in 2017. The 2017 report focused on the Mpumalanga, Eastern Cape, KwaZulu-Natal and North West Provincial Houses of Traditional Leaders.

Broadly, the findings of the study point to challenges in a number of key areas relating to the Houses of Traditional Leaders as institutions:

- Lack of effective coordination of the work of the Houses of Traditional Leaders, particularly of institutional and structural consistency/uniformity between the National and Provincial Houses, which leads to inconsistencies in terms of common understanding and discharging of the functions and responsibilities of these institutions;
- Low levels of representation and participation of female traditional leaders compared to male traditional leaders;
- The absence of clear written internal policies and/organisational rules and regulations on gender equality, women's rights and empowerment;
- Lack of adequate institutional support programmes (beyond mere financial and administrative support) from relevant government departments (i.e. Provincial Departments for Cooperative Governance and Traditional Affairs and the National Department for Cooperative Governance and Traditional Affairs) to strengthen and build capacity for the Houses of Traditional Leaders and their members to discharge their responsibilities effectively and fulfil their Constitutional mandate;
- Failure to observe, respect and strengthen the institutional autonomy of the Houses of Traditional leaders from government departments for Cooperative Governance and Traditional Affairs;
- Lack of gender mainstreaming and women's empowerment programmes accompanied by a limited understanding of and attention to gender mainstreaming and women's empowerment issues of concern; and
- Institutional weaknesses across the Houses of Traditional Leaders, particularly weak and ineffective or non-functioning internal committee systems which affect programme planning, execution and impact.

The study found that the National House has not been effective in discharging its responsibility and obligation to ensure uniformity and effective cooperation between itself and provincial houses. As a result, a number of discrepancies in the application of relevant legislation were uncovered. For instance, the Traditional Leadership Framework Act of 2009 is clear that provincial legislation must provide for mechanisms

and procedures to ensure that a sufficient number of women are represented in the provincial houses, and to ensure that women are elected as representatives of provincial houses to the National House. Yet some provinces have deviated in the application of this provision, without intervention from the National House. For instance, the KwaZulu-Natal, Eastern Cape and Mpumalanga Provincial Acts¹¹⁵ do not make provision for such mechanisms and procedures. These provinces also fail to provide for women's quotas in the representation of provincial houses while this is standard practice for other Houses including the National House. Furthermore, provinces like KwaZulu-Natal and the Northern Cape had all-male delegations of representatives to the National House, despite the 30% legislative quota requirement for women's representation among representatives to both provincial and national Houses. Other provinces have been able to ensure that at least one female representative is always included in their delegations to the National House. Such inconsistencies point to lack of effective coordination and monitoring in the application of relevant legislation or regulations applying to the Houses of Traditional Leaders.

One of the findings in the 2017 report of this study, also repeated in the current report, is that the majority of the Houses of traditional leaders had levels of representation of female traditional leaders within their memberships that were below the 30% legislated quota. Only the National House had managed to exceed the legislated 30% quota of women's representation – at the time the study was carried out, it had 35% women's representation in its membership. Other provincial Houses covered in this report fell short of the desired threshold (Limpopo 25%, Northern 27% & Free State 27%). For the provincial Houses covered in the 2017 report of this study, the levels of women's representation in their memberships were as follows: Eastern Cape (information not available), KwaZulu-Natal 11.32%, North West 12.% and Mpumalanga 19.04% The usual explanation given for such low levels of women's representation across the board is that matters of succession are the exclusive preserve and discretion of Royal Houses, and that the provincial and national Houses of Traditional Leaders, as well as the provincial and national departments of CoGTA, have no control over the gender profiles of those appointed by the Royal Houses as traditional leaders. Yet the National House of Traditional Leaders Act gives the National House of Traditional Leaders the power and authority to intervene and enforce gender transformation in the appointment processes of traditional leaders.¹¹⁶ This is an important legislative provision that enables and empowers the National House to take active steps to intervene positively in terms of ensuring gender transformation within the country's traditional leadership structures, yet this legislative provision appears to be largely ignored.

The findings of this study have also revealed that there were gaps in the provisions of legislation that seek to address issues of gender equality. For example, in the cases of provincial Houses where legislation makes provision for the 30% quota for women's representation in their memberships, not much was done in terms of realising this provision especially in key decision-making structures and/ or among Office Bearer positions. As a result, male traditional leaders usually comprised the majority in such

¹¹⁵ See CGE (2017), op. Cit.

¹¹⁶ See the National House of Traditional Leaders Act, 2009, S 11(1). A(viii)

positions as Chairpersons and members of Executive/Management Committees of the Houses. Only two (2) provinces have managed to elect women in positions of Chairperson in the current 2017-2022 term of office (i.e. Northern Cape and Free State). In terms of the Executive/Management Committees, representation was always skewed towards majority male members.

Another important weakness uncovered with regards to legislative provisions on the process of appointing traditional leaders by is that the current legislation creates a loophole which allows provincial Premiers and the Minister for Cooperative Governance and Traditional Affairs to lower the threshold/quota for women's representation in instances where it is found that there is an insufficient number of female traditional leaders. This means that both the provincial and national Houses could conveniently refer to this provision as a legitimate disclaimer to escape the legislative and constitutional imperative to promote gender equality and transformation within traditional leadership structures. They could therefore argue, on the basis of this legislative loophole, that gender transformation would be impossible to achieve due to the shortage of female traditional leaders. Many of the provincial Houses are already putting this forward as the reason why they have been unable to make progress in the gender transformation of traditional leadership structures.

This is also although some of the Houses have set up internal committees responsible for gender-related matters, although many of these committees had no concrete, clear and coherent programmes of action to promote and advance gender equality and transformation, including women's empowerment, within traditional leadership structures. For instance, the following houses had internal committees dealing with matters related to gender, sexual health and reproductive rights issues: The National House, Northern Cape House, Limpopo House and KwaZulu-Natal House. Others had committees called Social Development, which presumably would entail issues relating to gender, sexual health and reproductive rights.

The issue of the independence of the Houses was a common problem across the board. Our analysis reveals that while legislation clearly mandates the provincial and national Departments of Cooperative Governance and Traditional Affairs to provide support to these Houses, the provincial and national departments appear to have become dominant over the operational, administrative and funding affairs of these Houses. In other words, our analysis points us to a clear institutional control in the way the government departments exercise administrative and financial authority over the Houses of Traditional Leaders. It would have been expected that these Houses, as constitutionally autonomous structures, would be responsible for drafting their own strategic and operational plans and managing their own financial/budgetary and other resources to discharge their responsibilities and fulfil their constitutional mandates. Instead, available evidence and insights obtained from the views and opinions of many members of these houses point to a struggle of many of these Houses against the financial power and administrative control exercised by the government departments responsible for supporting them. While such control is exercised over them, most of them appear institutional weak, lack in resources, skills and expertise to drive clear

and coherent programmes of action (especially gender mainstreaming programmes) through their committee systems.

Knowledge and understanding of gender mainstreaming policies, legislation and processes were also generally limited among the members of these Houses. This was also applicable to members in the Gender Committees of these Houses. As a result, these Houses could not develop and plan concrete programmes, projects and related activities to address these challenges within their communities. In cases where some members had knowledge, understanding and interest in gender mainstreaming issues, they tended to pursue these interests in terms of individual initiatives and projects in collaboration with outside institutions, instead of collectively through their House Gender Committees. The Free State Provincial House appeared to be the only House with programmes focussing attention on gender issues.

As indicated at the beginning of this report, the study was also examining the work of the Houses in address issues related to the problems under-age/forced/childhood marriages as well as sexual health and reproductive rights. Virtually all the Houses covered in this report had not prioritised or paid attention to matters related to under-age/forced childhood marriages, despite widespread media report about such incidents in some of these provinces. In many cases, the members of these Houses who were interviewed for this study either had no knowledge of such incidents occurring in their provinces or denied that such incidents were prevalent in these provinces. The issues related to sexual health and reproductive rights were partly dealt with in the Free State Provincial House.

In many instances, the issue of budgetary/resource limitations was cited as a factor in explaining why these Houses had either failed to develop or successfully execute relevant programmes and plans of action, through relevant Committees, to address and tackle some of the key social challenges plaguing their committees. However, there also appeared to be significant levels of apathy and indifference among some of the members of these Houses concerning the capacity of these institutions to tackle the social issues that affected their communities. This is because many of the members were generally not knowledgeable about the social ills affecting their provinces and local communities. In numerous cases, the members of these Houses claimed to have formed partnerships with other institutions such as government departments and civil society organisations to tackle some of the problems facing their communities, as was the case with the Free State House on the issue of illegal circumcision schools in the province.

The information obtained through this study, as well as the findings obtained through discussion and analysis of this information in this report regarding the work of the Houses of Traditional Leaders in promoting and advancing gender transformation and women's empowerment paints a dismal picture. Based on these findings, the CGE can conclude that the Houses of Traditional Leaders, both national and provincial, have been ineffective in terms of putting in place the necessary policies, programmes and plans of action to promote gender equality and transformation in traditional leadership

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structures in South Africa. In addition, the CGE also concluded on the bases of the findings, discussion and analysis carried out in this report that the Houses of Traditional Leaders have not done much to put the necessary programmes and plans of action to address issues such as sexual health, reproductive health and rights challenges affecting members of their communities in their provinces.

5. RECOMMENDATIONS

Based on the findings and analysis, the following broad recommendations are proposed as the best course of action to be taken by the institution of traditional leadership:

- The findings in this report indicate a lack of coordination and uniformity between the National House of Traditional Leaders and the Provincial Houses of Traditional Leaders in terms of compliance with the provisions of the Constitution, national legislation, internal rules and orders and practices relating to gender equality and women's participation in the Houses. It is therefore recommended that the NHTL, in collaboration with national and provincial government Departments Cooperative Governance and Traditional Affairs develop intervention programmes or strategies and effective mechanisms and procedures to educate and raise awareness and knowledge of the provisions of the Constitution and relevant national legislation regarding gender transformation and women's empowerment in traditional leadership structures. This process should be accompanied by a thorough review all internal House Rules and Orders, including internal procedures and practices, relating to the promotion of gender equality, women's representation and participation in the operations of the Houses of Traditional Leaders.
- Secondly, it is recommended that the national Department of Cooperative Government and Traditional Affairs, working closely with the National House of Traditional Leaders, develop clear and effective systems to ensure effectiveness of accountability and oversight over the work of Provincial Houses of Traditional Leaders, and to build the capacity of the National House of Traditional Leaders to enforce accountability. This should be accompanied by a national programme to review the effectiveness of the current committee system of the Houses of Traditional Leaders, and where necessary provide support to build the institutional capacity of these Committees to discharge their functions and responsibilities.
- Thirdly, it is recommended that the NHTL utilises its legislative powers to enforce gender transformation in processes of appointing traditional leaders, to ensure that the fulfilment of the current 30% legislated quota for women's representation in the Houses of Traditional leaders is always observed and upheld, including the application of this quota in the appointment and representation of women in key decision-making structures of the Houses.
- Fourthly, it is recommended that provincial Premiers and the Minister for Cooperative Governance and Traditional Affairs carry out a review the 30% legislative quota requirement for women's representation in the National and Provincial Houses of Traditional Leaders to ensure that it aligns with national, regional and global gender instruments and frameworks for gender equality

and women's representation. Furthermore, the legislative loophole created by the current legal provision that allows provincial Premiers and the Minister to lower women's representation thresholds in cases whereby there is an insufficient number of women must also be reviewed and is possibly removed. In addition, the provincial Acts governing the affairs of the Provincial Houses of Traditional Leaders should also be reviewed and amended in this regard, with the internal Rules of and Orders governing the operations of the Houses of Traditional Leaders also reviewed and revised to be consistent with these amendments.

- Fifthly, it is recommended that the role of the national and provincial government departments of Cooperative Governance and Traditional Affairs in supporting the Houses of Traditional Leaders be reviewed to ensure greater in order to minimise the encroachment that undermines the autonomy of Houses of Traditional Leaders as independent Constitutional Bodies. In addition, the government should ensure provisions of support and capacity building for these institutions through the provision of the necessary skills and awareness raising around gender equality and gender mainstreaming policy and legislative frameworks.
- In terms of raising awareness around gender equality and gender mainstreaming policy and legislative frameworks, it is recommended that the National House of Traditional Leaders works closely with key institutions such as the CGE, in developing clear national skills development and awareness programmes for traditional leadership structures at national and provincial levels, including the Royal Houses, with emphasis on the need to comply with gender transformation regulatory frameworks around processes for the appointment of traditional leaders in South Africa as well as the representation and participation of women in traditional leadership structures at local, provincial and national levels.



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